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**CONTAINS CONFIDENTIAL PORTIONS**

# **Transcript of Micheal Paul Donovan, Corporate Designee**

**Date:** March 3, 2020

**Case:** RLI Insurance Company -v- Nexus Services, Inc.

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CONTAINS CONFIDENTIAL PORTIONS

## Transcript of Micheal Paul Donovan, Corporate Designee

1 (1 to 4)

Conducted on March 3, 2020

<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE WESTERN DISTRICT OF VIRGINIA</p> <p>3 Harrisonburg Division</p> <p>4 -----x</p> <p>5 RLI INSURANCE COMPANY, :</p> <p>6 Plaintiff, :</p> <p>7 v. : Case No.:</p> <p>8 NEXUS SERVICES, INC., et al.: 5:18-cv-00066-MFU</p> <p>9 Defendants.:</p> <p>10 -----x</p> <p>11</p> <p>12 Video deposition of NEXUS SERVICES, INC.</p> <p>13 By and through its Corporate Designee</p> <p>14 MICHEAL PAUL DONOVAN,</p> <p>15 CONTAINS CONFIDENTIAL PORTIONS</p> <p>16 McLean, Virginia</p> <p>17 Tuesday, March 3, 2020</p> <p>18 11:29 a.m.</p> <p>19</p> <p>20 Job No.: 290403</p> <p>21 Pages: 1 - 446</p> <p>22 Reported by: Judith E. Bellinger, RPR, CRR</p>	<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PLAINTIFF:</p> <p>3 VIVIAN KATSANTONIS, ESQUIRE</p> <p>4 CHRISTOPHER HARRIS, ESQUIRE</p> <p>5 WATT, TIEDER, HOFFAR &amp; FITZGERALD, LLP</p> <p>6 1765 Greensboro Station Place</p> <p>7 Suite 1000</p> <p>8 McLean, VA 22102</p> <p>9 703.749.1000</p> <p>10</p> <p>11 ON BEHALF OF THE DEFENDANTS:</p> <p>12 MARY DONNE PETERS, ESQUIRE (Telephonic)</p> <p>13 GORBY PETERS &amp; ASSOCIATES, LLC</p> <p>14 1175 Peachtree Street</p> <p>15 Suite 1000</p> <p>16 Atlanta, GA 30361</p> <p>17 404.239.1150</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p>1 Video deposition of MICHEAL PAUL DONOVAN held</p> <p>2 at the offices of:</p> <p>3</p> <p>4</p> <p>5 WATT, TIEDER, HOFFAR &amp; FITZGERALD, LLP</p> <p>6 1765 Greensboro Station Place</p> <p>7 Suite 1000</p> <p>8 McLean, VA 22102</p> <p>9 703.749.1000</p> <p>10</p> <p>11</p> <p>12</p> <p>13 Pursuant to notice, before Judith E.</p> <p>14 Bellinger, Registered Professional Reporter,</p> <p>15 Certified Realtime Reporter, and Notary Public in</p> <p>16 and for the Commonwealth of Virginia.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 A P P E A R A N C E S C O N T I N U E D</p> <p>2</p> <p>3 CHRIS K. KOWALCZUK, ESQUIRE</p> <p>4 ATTORNEY AT LAW</p> <p>5 P.O. Box 11971</p> <p>6 Roanoke, VA 24022</p> <p>7 540.345.0101</p> <p>8</p> <p>9 JOHN M. SHOREMAN, ESQUIRE</p> <p>10 MCFADDEN &amp; SHOREMAN</p> <p>11 1050 Connecticut Avenue, NW</p> <p>12 Suite 1000</p> <p>13 Washington, D.C. 20036</p> <p>14 202.772.3188</p> <p>15</p> <p>16 ALSO PRESENT:</p> <p>17 Jeremy Dineen, Videographer</p> <p>18 Mario Williams</p> <p>19 Spencer Chaszar</p> <p>20</p> <p>21</p> <p>22</p>

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## Transcript of Micheal Paul Donovan, Corporate Designee

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4 By Mr. Shoreman 431	4 January - December 2017
5 By Ms. Katsantonis 433	5 Exhibit 13 Nexus Services Inc. (Old) Profit 294
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7 (Attached to the transcript)	7 Bates No. Eckert_Nexus_027807
8	8 Exhibit 14 Nexus Services Inc. (Old) Profit 297
9 Donovan Deposition Exhibits: PAGE	9 and Loss January - December 2018,
10 Exhibit 1 Notice of 30(B)(6) Deposition of 11	10 Bates No. Eckert_Nexus_027806
11 Nexus Services, Inc.	11 Exhibit 15 Email chain. Top email from Chris 315
12 Exhibit 2 Summary of Nexus' Contempt by 67	12 Harris to Stefanie Castalano dated
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16 Exhibit 4 Summary of Monthly RLI Bond Demands 88	16 Mar 2018
17 & Nexus Responses	17 Exhibit 17 Letter dated March 3, 2017, to 339
18 Exhibit 5 Email chain. Top email from Laura 131	18 Micheal Donovan from Ira Sussman
19 Piispanen to eschneider@nexushelps.com	19 Exhibit 18 Email from Ira Sussman to 341
20 dated 10 May 2016, Bates Nos.	20 mdonovan@nexushelps.com dated
21 RLY_000000001 -0002	21 3/6/2017, Bates No. NEXUS0222756
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8 bigmarcobonds@gmail.com, and others,	8 Exhibit 21 Email chain. Top email from Dave 372
9 dated January 21, 2020	9 Sandoz to Mike Donovan dated
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11 bigmarcobonds@gmail.com, and others,	11 Exhibit 22 Email chain. Top email from Mike 401
12 dated November 13, 2019	12 Donovan to Dave Sandoz dated
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14 bigmarcobonds@gmail.com dated April 2,	14 3300
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17 Piispanen to	17 Exhibit 24 Letter dated March 19, 2018, to 425
18 eschneider@nexushelps.com, and others,	18 Mary Donne Peters from Vivian
19 dated 19 Sep 2016, Bates Nos.	19 Katsantonis
20 RLI_000000050 - 0084	20 Exhibit 25 Email from Mary Donne Peters to 427
21 Exhibit 11 Exhibit 6 256	21 Vivian Katsantonis dated March 28,
22	22 2018

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<p style="text-align: right;">9</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: Here begins</p> <p>3 Disc No. 1 in the 30(b)(6) deposition of Nexus</p> <p>4 Services, Inc., Libre by Nexus, Inc. and Homes by</p> <p>5 Nexus, Inc. by corporate designee Michael Donovan</p> <p>6 in the matter of RLI Insurance Company v. Nexus</p> <p>7 Services, Inc., et al., in the United States</p> <p>8 District Court for the Western District of</p> <p>9 Virginia, Harrisonburg Division, Case</p> <p>10 No. 518-CC-00066MFU.</p> <p>11 Today's date is March 3rd, 2020, the</p> <p>12 time on the video monitor is 11:29.</p> <p>13 The videographer today is Jeremy Dineen</p> <p>14 representing Planet Depos. This video deposition</p> <p>15 is taking place at 1765 Greensboro Station Place</p> <p>16 in McLean, Virginia. Would counsel please voice</p> <p>17 identify themselves and state whom they represent.</p> <p>18 MS. KATSANTONIS: Vivian Katsantonis on</p> <p>19 behalf of the Plaintiff RLI Insurance Company.</p> <p>20 MR. HARRIS: Christopher Harris, also</p> <p>21 on behalf of the Plaintiff.</p> <p>22 MR. SHOREMAN: John Shoreman on behalf</p>	<p style="text-align: right;">11</p> <p>1 DIRECT EXAMINATION BY COUNSEL FOR THE PLAINTIFF</p> <p>2 BY MS. KATSANTONIS:</p> <p>3 Q All right. Good morning, Mr. Donovan.</p> <p>4 A Good morning, Ms. Katsantonis. How are</p> <p>5 you?</p> <p>6 Q Good, thank you.</p> <p>7 We're here this morning for the</p> <p>8 30(b)(6) deposition of Nexus Services, Inc., Libre</p> <p>9 by Nexus, and Homes by Nexus.</p> <p>10 A Yes, and I get to be the deponent. How</p> <p>11 exciting.</p> <p>12 Q All right. So I'm going to just hand</p> <p>13 you and we're going to mark this as Exhibit 1.</p> <p>14 (Donovan Exhibit 1 marked for</p> <p>15 identification and attached to the transcript.)</p> <p>16 MR. SHOREMAN: Thank you.</p> <p>17 MS. KATSANTONIS: Sure.</p> <p>18 MR. SHOREMAN: Just throw it at me,</p> <p>19 that's fine.</p> <p>20 Q I've marked as Exhibit 1 the 30(b)(6)</p> <p>21 notice. This is the one for Nexus Services.</p> <p>22 A Uh-huh.</p>
<p style="text-align: right;">10</p> <p>1 of Defendants Nexus Services, Libre by Nexus, and</p> <p>2 Homes by Nexus.</p> <p>3 MR. WILLIAMS: Mario Williams on behalf</p> <p>4 of the Defendant.</p> <p>5 MR. KOWALCZUK: Chris Kowalczuk on</p> <p>6 behalf of the Defendants and present with me is a</p> <p>7 college intern, Spencer Chaszar.</p> <p>8 MS. KATSANTONIS: On the phone we have</p> <p>9 Mary Donne for the Defendants.</p> <p>10 MS. DONNE-PETERS: Mary Donne-Peters on</p> <p>11 behalf of the Defendants.</p> <p>12 THE VIDEOGRAPHER: The court reporter</p> <p>13 today is Judy Bellinger representing Planet Depos.</p> <p>14 Would the reporter please swear in the witness.</p> <p>15 Whereupon,</p> <p>16 MICHEAL PAUL DONOVAN,</p> <p>17 being first duly sworn or affirmed to testify to</p> <p>18 the truth, the whole truth, and nothing but the</p> <p>19 truth, was examined and testified as follows:</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">12</p> <p>1 Q And are you familiar with this</p> <p>2 document? Have you reviewed it?</p> <p>3 A I have reviewed it.</p> <p>4 Q Okay. And there are 25 categories</p> <p>5 listed as topics to be discussed during the</p> <p>6 30(b)(6) deposition. Are you familiar with those</p> <p>7 topics?</p> <p>8 A I am.</p> <p>9 Q And are you the corporate</p> <p>10 representative that is providing testimony on</p> <p>11 behalf of Nexus Services, Inc., Libre by Nexus and</p> <p>12 Homes by Nexus pursuant to the 30(b)(6) deposition</p> <p>13 notices?</p> <p>14 A I am.</p> <p>15 Q Okay. And did you bring documents with</p> <p>16 you today to assist in your testimony?</p> <p>17 A I did in fact.</p> <p>18 Q Okay. And those documents have not yet</p> <p>19 been actually given to counsel for RLI, but we'll</p> <p>20 proceed and then you can show me the documents</p> <p>21 you're relying on as we proceed?</p> <p>22 A Sure, and my intention is to leave them</p>

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<p>13</p> <p>1 with you by the way, so I intend to make a 2 production of everything I brought. 3 Q Okay. 4 MR. SHOREMAN: Let me just state for 5 the record, some of the documents that he just 6 referred to have already been produced. 7 A That's correct. 8 Q Sure. Generally. Can you just 9 generally describe the types of documents you've 10 brought with you? 11 A Sure. I have the P&amp;L and property list 12 for Homes by Nexus, which covers the properties to 13 kind of go in order. I have prior P&amp;Ls for the 14 different periods that the categories request 15 information on. I have general ledger 16 information, I have a disk with that information 17 that I'll provide as well. 18 I have a KPI for Libre by Nexus. I 19 have the global client list to show the total 20 amount of indemnification that Nexus has been 21 responsible for in the life of its program. I 22 have the total invoices paid and the total global</p>	<p>15</p> <p>1 Q And what is the number of program 2 participants? 3 A So the number of program 4 participants -- would you give me just a second, 5 I'm so sorry. 6 Q No, no, no. Just as a clarification. 7 When we use the word "program participants," let's 8 make sure we're talking about are these all 9 immigrants who Nexus has facilitated an 10 immigration bond for their release from custody? 11 A That's correct. The program 12 participant would specifically be an immigration 13 bond securitized client. They're people in 14 Capsule, of course, that you might see that are 15 dealing with other issues but you're not going to 16 find any of those people. This definition is just 17 for the immigration bond securitization. And it's 18 roughly about 24,000 people. The total is 23,000 19 and some change and I've got that on this document 20 that I'm going to give to you. I'm going to 21 produce it electronically because it's thousands 22 of pages.</p>
<p>14</p> <p>1 fail rate. I have the fail rate for RLI, reviewed 2 those and reviewed several other documents related 3 to the balance sheets as well. 4 Q Okay. Great. 5 A It was a lot to remember. 6 Q I can appreciate that fact. Thank you. 7 So in looking at the 30(b)(6) notice. 8 A Yes, ma'am. 9 Q And some of the topics I know there's 10 going to be a little bit of overlap. But let's 11 talk about, first, the program. 12 A Okay. 13 Q And let's start off just getting some 14 sort of historical data information regarding 15 Nexus' program. 16 So you said you brought data with you 17 as to how many program participants Nexus has had. 18 Is that through the entire life of the program? 19 A Through the entire life of the program. 20 Q And so what dates would that cover? 21 A That would cover from January of 2014 22 to present.</p>	<p>16</p> <p>1 Q Okay. All right. So you said that the 2 total number of program participants or immigrants 3 for whom you've requested a bond for is? 4 A About 24,000. I can give you the exact 5 number, but, Vivian, you're never going to believe 6 this, the last page of this is missing so I need 7 to pull up the electronic copy which I can at a 8 break and give you the total number. I thought I 9 was doing so well, too. 10 Q About 24,000? 11 A Correct. 12 Q And how many outstanding program 13 participants exist today whom Nexus has requested 14 a bond for? 15 A So Nexus doesn't, we don't track the -- 16 we don't track when the client is exonerated as 17 sort of coming off the program, when a client's 18 bond is canceled because we're often still 19 providing services to the client. So the number 20 of active clients, meaning active that they 21 haven't had their bonds canceled just isn't 22 something that we track. I'm happy to compile it,</p>

<p>17</p> <p>1 but it isn't something that we track as a matter 2 of our record keeping. 3 Q Okay. So you don't -- so as you sit 4 here today, you don't know how many active clients 5 or program participants exist who Nexus' requested 6 a bond for? 7 A Correct. 8 Q Okay. So what information do you 9 have -- or what did you collect? How many bond -- 10 participants have -- so you don't know how many 11 have been canceled; is that right? 12 A That's correct. And the idea, and I 13 think there's some confusion, there's no benefit 14 in calculating a fail rate by understanding how 15 many bonds have been canceled because bonds can be 16 canceled over the life of the bond and as we know, 17 a claim is when a bond is breached and there's 18 no -- you can't appeal it, it's done. That's when 19 a claim is made in favor of the government, right? 20 Q That's Nexus' definition. I just want 21 to understand what your definition is. 22 A Yes, and the CFR.</p>	<p>19</p> <p>1 bond, right? 2 A I mean until there's a claim against 3 the bond you don't have to pay the bond, period, 4 right, so... 5 Q Just stick with my question. When a 6 bond is canceled, when an I391 form is issued, the 7 surety is no longer responsible for paying that 8 bond and, therefore, doesn't have any more 9 outstanding exposure on the bond; isn't that 10 correct? 11 A No, I don't think the surety has a 12 responsibility to pay a bond just because it's 13 outstanding, so I disagree. 14 Q Wait, I don't understand. 15 MR. SHOREMAN: No, no, please don't 16 interrupt him. 17 A What I would say is that there would be 18 no further -- there would be no future chance of 19 any liability, but the idea that an open bond is a 20 liability is wrong. I mean, just because you have 21 an open bond there's no claim against that bond. 22 That person hasn't failed. So it's not as if the</p>
<p>18</p> <p>1 Q Well, again -- 2 MR. SHOREMAN: Objection. He's 3 testifying on behalf of the corporation. 4 MS. KATSANTONIS: Right. What Nexus' 5 definition is because it's certainly a legal 6 conclusion. 7 But you're saying that a -- 8 A I'm saying that the number of 9 cancellations has nothing to do with our success 10 or fail rate. 11 Q Okay. Don't you believe that the 12 cancellation is an important figure for sureties? 13 A I think the cancellation was an 14 important figure of sureties before the election 15 of Donald John Trump as president but 16 unfortunately the current administration has 17 exacerbated the immigration court process. These 18 things take much longer now and there's no way to 19 forecast some of those realities. 20 Q I'm not asking for forecasting, I'm 21 just saying when a bond is canceled, the surety is 22 no longer -- has exposure for payment of that</p>	<p>20</p> <p>1 surety owes that money. It's not as if RLI -- 2 Q You understand what exposure is, right? 3 Exposure is a potential. Potential liability, 4 right? 5 A No, I do. I do absolutely understand 6 what exposure is. 7 Q Okay? 8 A But I want to make sure we're clear 9 between this idea that there might be something 10 due one day and what we are talking about which is 11 when things come due because when things comes due 12 Nexus stands in front of RLI and pays them every 13 single time. 14 Q Let me -- I hear -- I get where 15 you're -- you know, you're asserting Nexus' 16 position and that's fine. But let me just take it 17 in smaller bits, okay? 18 When a surety receives an I391 form 19 cancellation, okay, the surety, isn't it true, 20 that the surety has no liability -- no further 21 liability on the bond? 22 MR. SHOREMAN: Objection. This witness</p>

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<p>21</p> <p>1 is here to testify on behalf of Nexus.</p> <p>2 Q That's what I mean.</p> <p>3 MR. SHOREMAN: Not the surety. You're</p> <p>4 asking him about a surety.</p> <p>5 MS. KATSANTONIS: I'm asking him about</p> <p>6 Nexus' understanding of a cancellation.</p> <p>7 MR. SHOREMAN: That's a different</p> <p>8 question.</p> <p>9 MS. KATSANTONIS: No.</p> <p>10 <b>A I think a canceled bond means that the</b></p> <p>11 <b>case is completely over and there's no chance of</b></p> <p>12 <b>any potential future liability. I think that's an</b></p> <p>13 <b>appropriate way to say it. I don't believe the</b></p> <p>14 <b>existence of a bond creates liability.</b></p> <p>15 Q Yeah, when a surety issues a bond it</p> <p>16 undertakes an obligation, right?</p> <p>17 <b>A Sure, it does.</b></p> <p>18 Q And that's a liability, right?</p> <p>19 <b>A But that obligation is only -- it only</b></p> <p>20 <b>comes to fruition if there's a claim. If there's</b></p> <p>21 <b>a breach and the appeal process is exhausted,</b></p> <p>22 <b>that's when Nexus has to pay. And we do every</b></p>	<p>23</p> <p>1 <b>A I think that -- no. I think that the</b></p> <p>2 <b>surety promises the government that they will help</b></p> <p>3 <b>facilitate that or pay the penal amount of the</b></p> <p>4 <b>bond if it's breached.</b></p> <p>5 <b>I think the face value of the I352 is</b></p> <p>6 <b>pretty descriptive of what a bond is and what</b></p> <p>7 <b>ultimately happens as a result of it. The vast</b></p> <p>8 <b>majority of bonds never breach. So to consider</b></p> <p>9 <b>them a liability would be insane much the same way</b></p> <p>10 <b>that RLI apportioned, what, a dollar for risk</b></p> <p>11 <b>reserve or \$3 for risk reserve for these bonds. I</b></p> <p>12 <b>mean, clearly you're not expecting -- your</b></p> <p>13 <b>client's not expecting them all to breach if</b></p> <p>14 <b>they're only reserving a dollar.</b></p> <p>15 Q Mr. Donovan, I'm just getting to the</p> <p>16 obligation that they've agreed to.</p> <p>17 <b>A I understand.</b></p> <p>18 Q So one obligation they've agreed to</p> <p>19 that you understand is to -- that they advise the</p> <p>20 government -- the Department of Homeland Security</p> <p>21 that the immigrant will appear pursuant to a</p> <p>22 notice to deliver, right?</p>
<p>22</p> <p>1 <b>single time.</b></p> <p>2 Q When the surety -- when it issues a</p> <p>3 bond, it -- is it your understanding the surety</p> <p>4 obligates itself to the government to perform the</p> <p>5 obligations under the bond, which are to have the</p> <p>6 immigrant appear; is that correct?</p> <p>7 MR. SHOREMAN: Objection.</p> <p>8 Q Or respond to a notice to deliver.</p> <p>9 MR. SHOREMAN: Objection. Asked and</p> <p>10 answered.</p> <p>11 <b>A I think it's --</b></p> <p>12 MS. KATSANTONIS: Not asked and</p> <p>13 answered.</p> <p>14 <b>A -- ultimately the immigrant either</b></p> <p>15 <b>finishes their case or the surety has to pay the</b></p> <p>16 <b>penal amount of the bond.</b></p> <p>17 Q Okay. I got it. When the surety</p> <p>18 issues a bond, doesn't it promise the government</p> <p>19 that the immigrant will appear or will respond to</p> <p>20 a notice to deliver?</p> <p>21 MR. SHOREMAN: Objection. Asked and</p> <p>22 answered.</p>	<p>24</p> <p>1 MR. SHOREMAN: Objection. This is</p> <p>2 beyond the scope. The designated areas don't</p> <p>3 discuss what a surety's obligations may be to the</p> <p>4 government.</p> <p>5 MR. WILLIAMS: Are you talking about</p> <p>6 exoneration, what your expert said? Or what are</p> <p>7 you talking about?</p> <p>8 MS. KATSANTONIS: No. I'm talking</p> <p>9 about -- Mr. Donovan opened up the issue by saying</p> <p>10 the surety doesn't have liability, so I'm trying</p> <p>11 to understand his --</p> <p>12 MR. SHOREMAN: If you want to --</p> <p>13 MS. KATSANTONIS: He said -- his</p> <p>14 testimony is the surety doesn't have liability.</p> <p>15 So I'm trying to get his understanding of what the</p> <p>16 obligations are under the bond.</p> <p>17 MR. SHOREMAN: Right.</p> <p>18 MS. KATSANTONIS: If he's going to</p> <p>19 make -- if he's going to have that testimony, he</p> <p>20 needs to explain it.</p> <p>21 MR. SHOREMAN: Well, if you're going to</p> <p>22 ask this line of questions at this point as far as</p>

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<p>25</p> <p>1 you've gone, he's going to be answering by his 2 personal and not as a corporate representative. 3 MS. KATSANTONIS: Well, then his answer 4 as to liability is as to his personal knowledge 5 and not as a corporate representative. 6 MR. SHOREMAN: I don't know. You wrote 7 out these areas. 8 MS. KATSANTONIS: It doesn't matter 9 anyways. He's the president of the company. Even 10 his personal knowledge is -- 11 MR. HARRIS: You don't need to argue. 12 Just ask your questions. 13 MS. KATSANTONIS: Okay. Moving on. 14 Q Did you understand when the surety 15 issues a bond it undertakes the obligation to the 16 government that it will deliver the immigrant 17 pursuant to a notice to deliver? 18 MR. SHOREMAN: Objection. That 19 question's been asked and answered I think three 20 times. 21 <b>A It's part of the bond. It's not the</b> 22 <b>end of the bond and the surety may have to pay the</b></p>	<p>27</p> <p>1 bond, right? 2 <b>A Well, it's the beginning of a process,</b> 3 <b>right? So a breach can be issued because a person</b> 4 <b>doesn't show up for an I-340 but there are all</b> 5 <b>kinds of defenses and so, you know, there's an</b> 6 <b>opportunity for the individual to seek additional</b> 7 <b>relief. And the vast -- I mean, there are a</b> 8 <b>significant number of bonds that don't -- that</b> 9 <b>ultimately breach that aren't -- that aren't paid.</b> 10 <b>Even at RLI --</b> 11 Q We're talking about -- 12 MR. SHOREMAN: Wait a minute. 13 <b>A -- we've have nine successful appeals,</b> 14 <b>for example, and we don't -- we don't do a lot --</b> 15 <b>we can't do any contesting with RLI, right.</b> 16 Q Sure, but we're talking about -- 17 MR. WILLIAMS: Vivian, I think one of 18 the problems is that you're not defining what you 19 mean by discharge. Discharge from a claim being 20 made, or what are you talking about? 21 MS. KATSANTONIS: Discharge from the 22 bond. They have no obligation.</p>
<p>26</p> <p>1 <b>penal amount if the bond breaches.</b> 2 Q Okay. But you agree that it's part of 3 the obligation. 4 <b>A Yeah. And I think it's important to</b> 5 <b>understand that when I talk -- when I said</b> 6 <b>liability, I'm talking about -- and you understand</b> 7 <b>what I'm talking about, very specific liability to</b> 8 <b>pay. And as I've pointed out, RLI's own reserves</b> 9 <b>show that there is not a feeling that these -- you</b> 10 <b>know, that there's a need to consider all of these</b> 11 <b>bonds a liability that would have to be paid. And</b> 12 <b>that was the point I made and I think you</b> 13 <b>understand that, right?</b> 14 Q Isn't it true that one way to discharge 15 the bond is to deliver the alien as required? 16 <b>A If an I-340 is requested, is issued,</b> 17 <b>and there is a return date of some sort on an</b> 18 <b>I-340, then, yes. If you deliver the immigrant,</b> 19 <b>then that will preclude the breach, presumably if</b> 20 <b>the immigrant doesn't show up for that meeting,</b> 21 <b>then there would be a breach.</b> 22 Q And it will -- it can discharge the</p>	<p>28</p> <p>1 MR. WILLIAMS: What does discharge 2 mean? 3 MS. KATSANTONIS: Means that the bond, 4 there's no further obligation under the bond. 5 MR. WILLIAMS: Obligation to pay after 6 the claim? 7 MS. KATSANTONIS: Any obligation. Any 8 obligation at all. 9 MR. WILLIAMS: Well, then he needs to 10 understand. 11 <b>A I'm talking about an obligation to pay.</b> 12 Q Okay. But I'm saying when the 13 immigrant is delivered pursuant to a notice to 14 deliver, that also can discharge the bond, right? 15 <b>A No. No, because just because they --</b> 16 <b>just because they show up for an I-340 doesn't</b> 17 <b>mean that the bond is canceled. It may be part of</b> 18 <b>their responsibilities but those responsibilities</b> 19 <b>are ongoing.</b> 20 Q What if it's a notice to remove and the 21 alien is delivered, isn't that a -- and DHS takes 22 custody of the immigrant, isn't that -- doesn't</p>

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8 (29 to 32)

<p>29</p> <p>1 that discharge the bond?</p> <p>2 <b>A Yes, that would discharge the bond</b></p> <p>3 <b>under that circumstance. But in many of the</b></p> <p>4 <b>circumstances where immigrants are delivered they</b></p> <p>5 <b>are released. So they are not held. And if they</b></p> <p>6 <b>are released it doesn't discharge the liability on</b></p> <p>7 <b>the bond.</b></p> <p>8 Q Right. So one way to discharge the</p> <p>9 bond is to deliver the alien so that DHS takes the</p> <p>10 alien in custody; is that correct?</p> <p>11 <b>A I'm going to say -- I'm not going to</b></p> <p>12 <b>use that. I'm going to say cancel because I want</b></p> <p>13 <b>to be consistent with what the government uses.</b></p> <p>14 <b>So one way to cancel a bond is to have that person</b></p> <p>15 <b>fulfill their responsibilities. They can fulfill</b></p> <p>16 <b>those responsibility by going to court and having</b></p> <p>17 <b>their case closed. They can fulfill those</b></p> <p>18 <b>responsibilities by not, you know, by going into</b></p> <p>19 <b>an I-340 hearing, for example, and being taken</b></p> <p>20 <b>into custody.</b></p> <p>21 Q And when a bond is canceled, the surety</p> <p>22 has no further obligation under the bond, correct?</p>	<p>31</p> <p>1 30(b)(6).</p> <p>2 MS. KATSANTONIS: Mr. Shoreman, there's</p> <p>3 so many bullet points that that goes to as well as</p> <p>4 Mr. Donovan's own testimony. It's a simple</p> <p>5 question.</p> <p>6 MR. SHOREMAN: It's not a simple</p> <p>7 question because you're asking him now -- he can</p> <p>8 only testify to this on his personal knowledge and</p> <p>9 not as a corporate representative.</p> <p>10 MS. KATSANTONIS: That's fine.</p> <p>11 MR. SHOREMAN: If you want to go ahead</p> <p>12 with that, marking the fact that you took seven</p> <p>13 hours of this man's deposition last week.</p> <p>14 MS. KATSANTONIS: That's okay.</p> <p>15 MR. SHOREMAN: It's not okay because</p> <p>16 we're not just going to go back and replot.</p> <p>17 MR. HARRIS: Actually, you're wasting</p> <p>18 our time and extending this deposition with your</p> <p>19 lengthy speaking objection.</p> <p>20 MR. SHOREMAN: But you told me</p> <p>21 yesterday, Mr. Harris, that was going to take</p> <p>22 seven hours.</p>
<p>30</p> <p>1 <b>A An obligation to?</b></p> <p>2 Q Any obligation. When a bond is</p> <p>3 canceled, a surety has no further obligation under</p> <p>4 the bond?</p> <p>5 <b>A Right. Well, I would say when a bond</b></p> <p>6 <b>is canceled the immigrant has no further</b></p> <p>7 <b>obligation.</b></p> <p>8 Q That's fine. But what about the</p> <p>9 surety?</p> <p>10 <b>A Again, as I understand it, the surety,</b></p> <p>11 <b>RLI certainly doesn't go and pick people up and</b></p> <p>12 <b>take them to hearings, right, nobody does that</b></p> <p>13 <b>that's, you know...</b></p> <p>14 Q Mr. Donovan, it's a simple question.</p> <p>15 When a surety bond -- when a bond is canceled the</p> <p>16 surety has no further obligation under the bond,</p> <p>17 right?</p> <p>18 MR. SHOREMAN: Objection. Objection.</p> <p>19 Objection. It may be a simple question but it's</p> <p>20 not within --</p> <p>21 MS. KATSANTONIS: It is.</p> <p>22 MR. SHOREMAN: -- the scope of this</p>	<p>32</p> <p>1 MR. HARRIS: You can object to form,</p> <p>2 that's what the rules allow.</p> <p>3 MR. SHOREMAN: No.</p> <p>4 MS. KATSANTONIS: We're going to go off</p> <p>5 the record.</p> <p>6 THE VIDEOGRAPHER: We are going off the</p> <p>7 record at 11:48.</p> <p>8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record at 11:52.</p> <p>11 BY MS. KATSANTONIS:</p> <p>12 Q Okay. Mr. Donovan, we took a break, I</p> <p>13 was asking you your understanding of when a bond</p> <p>14 is canceled, does the surety have no further</p> <p>15 obligations under the bond?</p> <p>16 MR. SHOREMAN: Objection. Asked and</p> <p>17 answered.</p> <p>18 <b>A Yeah, I think I've answered that</b></p> <p>19 <b>question. And specifically, the surety's</b></p> <p>20 <b>obligation is to pay if the bond is breached and</b></p> <p>21 <b>there are no further appeals, okay? Now, the</b></p> <p>22 <b>immigrant has an obligation as a bonded principal,</b></p>

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<p>33</p> <p>1 and their obligation will stop when their bond is</p> <p>2 canceled.</p> <p>3 Q You testified that an immigrant, one of</p> <p>4 the conditions of the bond is to deliver the</p> <p>5 alien, the immigrant, right?</p> <p>6 A There is a notice to deliver that can</p> <p>7 be issued. It's not a condition of every bond,</p> <p>8 no.</p> <p>9 Q Well, it's a condition of a vast</p> <p>10 majority of the bonds, right, a notice to deliver?</p> <p>11 A No. The vast majority of the bonds end</p> <p>12 without any notice of action whatsoever. No, the</p> <p>13 vast majority of bonds cancel because people go</p> <p>14 through the process. The people that get --</p> <p>15 you're talking about people who --</p> <p>16 MR. SHOREMAN: Wait a minute, would you</p> <p>17 mind not interrupting the witness, please.</p> <p>18 MS. KATSANTONIS: No, I know.</p> <p>19 A You're talking about people who have</p> <p>20 I340s. An I-340 is issued by a bail -- by a bond</p> <p>21 unit officer in the Department of Homeland</p> <p>22 Security. When there is some kind of issue, there</p>	<p>35</p> <p>1 obligation anyway because the bond hasn't</p> <p>2 breached, right?</p> <p>3 Q I'm talking about --</p> <p>4 A So the surety --</p> <p>5 MR. SHOREMAN: Wait a minute,</p> <p>6 objection.</p> <p>7 Would you please let this witness</p> <p>8 finish his answer?</p> <p>9 MS. KATSANTONIS: I'm just --</p> <p>10 MR. SHOREMAN: You know, you jumped in.</p> <p>11 He was in the middle of an answer. And this is --</p> <p>12 A My job, pursuant to the contract, is to</p> <p>13 stand in front of RLI, right? My job is to pay</p> <p>14 when there's a final bond breach. That's what we</p> <p>15 do every single time.</p> <p>16 Q Okay. So my question is, again, once</p> <p>17 the bond -- an immigrant is taken into custody and</p> <p>18 an I391 form bond cancellation is issued, the</p> <p>19 surety has no further obligation under its bond to</p> <p>20 your understanding; is that correct?</p> <p>21 A Well, the surety wouldn't have any</p> <p>22 obligation to the bond anyway unless it was</p>
<p>34</p> <p>1 might have been, it might be that they didn't go</p> <p>2 to court, which is a serious issue. It might be</p> <p>3 that law enforcement wants to talk to them about</p> <p>4 an issue that's going on. It might be that ICE</p> <p>5 has a conversation that they want to have with</p> <p>6 them. It could be any number of things. That</p> <p>7 I-340 then compels that person to come and meet</p> <p>8 with an ICE officer. That doesn't happen in every</p> <p>9 bond.</p> <p>10 Q Right.</p> <p>11 A It only happens in certain bonds.</p> <p>12 Q And what percentage of bonds receive</p> <p>13 notice to deliver?</p> <p>14 A I have no idea. We don't track that.</p> <p>15 Q Okay. And what I'm asking you is if an</p> <p>16 immigrant is delivered and taken into custody, we</p> <p>17 talked about that, that cancels the bonds, right?</p> <p>18 A That would cancel the bond.</p> <p>19 Q Right. And in that scenario, if the</p> <p>20 bond is canceled doesn't that mean the surety has</p> <p>21 no further obligation?</p> <p>22 A Right. But the surety doesn't have an</p>	<p>36</p> <p>1 breached and had to pay.</p> <p>2 Q So the answer is yes.</p> <p>3 MR. SHOREMAN: Objection. Objection.</p> <p>4 That is not a proper question.</p> <p>5 Q Okay. An I-340 notice is a demand on</p> <p>6 the bond, correct?</p> <p>7 A It's a demand for the individual to</p> <p>8 appear before ICE.</p> <p>9 Q It's a demand to deliver, right?</p> <p>10 A It's a notice to deliver. A demand is</p> <p>11 on the individual.</p> <p>12 Q And the surety receives a copy of the</p> <p>13 I-340 notice?</p> <p>14 A The surety is the -- the obligor or the</p> <p>15 co-obligor receive it. The only way we get it is</p> <p>16 if the surety sends it to us.</p> <p>17 Q Does an I-340 notice give a co-obligor</p> <p>18 the right to arrest a principal and turn him or</p> <p>19 her over to ICE?</p> <p>20 MR. SHOREMAN: Objection. That calls</p> <p>21 for a legal conclusion.</p> <p>22 A It is -- I think it's unclear. The law</p>

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1 is really gray in the area of bounty hunting and  
 2 arresting individuals and it can vary state by  
 3 state by state. For example, in Florida, if your  
 4 bond principal is from Florida for example, you  
 5 would have to hire a bail agent in Florida. And  
 6 if the bond was posted by a bail agent not  
 7 licensed in Florida, you would have no authority  
 8 because state law would prohibit it. So there's  
 9 just a ton of different rules and regulations and  
 10 it's what makes me thankful that I'm not a bail  
 11 agent and I never have to worry about doing that.

12 Q All right. So in paragraph 50 of  
 13 Nexus' amended counterclaim, if Nexus stated the  
 14 only legal effect of an I-340 notice is that it  
 15 gives the co-obligors the right to arrest the  
 16 principal and turn him or her over to ICE custody  
 17 without further notice, that's not an accurate  
 18 statement?

19 A Oh, it is. I'm not a co-obligor.

20 Q Okay.

21 A I said we don't -- I said thankfully I  
 22 don't do that. I'm not a bail agent. I'm not a

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1 co-obligor. I'll never be a co-obligor on these  
 2 bonds and I will never arrest an individual.  
 3 There are enough police in this world. We don't  
 4 need another one.

5 Q Is there a standing directive at Nexus  
 6 that you would not deliver -- arrest or deliver an  
 7 alien?

8 A We have a policy at Nexus that if we  
 9 are -- if we receive a request related to an issue  
 10 involving a remand, for example, a person who we  
 11 identity is likely not to go to court, or perhaps  
 12 a person whose family member has requested that  
 13 something be done because they're afraid for their  
 14 safety or others.

15 In very limited situations, our policy  
 16 manual provides a function by which our advisory  
 17 board will consider on a case-by-case basis  
 18 individual circumstances. Only in Nexus' history  
 19 have we elected to do that only one time. And it  
 20 is something that we very much don't want to have  
 21 to do. We believe the success of our program is  
 22 built on convincing people to do the right thing

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1 for the right reasons. We're not cops or bounty  
 2 hunters, and we don't want to be. And in the  
 3 instance where it was done, it was bail agents  
 4 executing it. The co-obligor was the person  
 5 responsible.

6 Q What was the one instance?

7 A It's a very costly situation that  
 8 doesn't make sense.

9 The one situation involved a client who  
 10 had been accused of murdering her husband in her  
 11 home country. She comes to the United States and  
 12 had been released and her family member -- her  
 13 family members contacted us and said she was an  
 14 active gang member.

15 Q Is this the one that you talked about  
 16 in your deposition on Wednesday?

17 A Did I talk about it in my deposition on  
 18 Wednesday, Ms. Katsantonis?

19 Q I don't know. Do you know who the name  
 20 of the --

21 A I was ill, I don't remember.

22 Q Do you know who the name of the

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1 immigrant is?

2 A [REDACTED]

3 Q Okay. So that's different than one  
 4 that we talked about on Wednesday.

5 Do you recall that?

6 A Who were we talking about on Wednesday?  
 7 Because there's a difference between a person  
 8 being arrested and someone coming into an I-340  
 9 meeting, you understand.

10 Q Don't you escort some of the immigrants  
 11 to deliver them pursuant to a notice to deliver?

12 A No, I think that -- and let's -- I'm  
 13 going to be very clear here. Please don't  
 14 misstate my language, especially in this area,  
 15 it's very offensive. The idea that you would  
 16 assert that we, by accompanying an immigrant who's  
 17 terrified to a meeting like this that we're  
 18 somehow acting as an agent of arrest is absolutely  
 19 offensive and reprehensible.

20 Q What's offensive? My term as --

21 A The idea that we would -- we help  
 22 people come to these meetings and deal with their

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<p>41</p> <p>1 life situations. We're not, you know, throwing</p> <p>2 people in the back of Suburbans and putting</p> <p>3 handcuffs on them. So I want to make sure</p> <p>4 there's -- I want to make sure your question to</p> <p>5 me, Ms. Katsantonis, was whether or not I remember</p> <p>6 from my deposition saying that I had done this</p> <p>7 previously. And that is an inappropriate</p> <p>8 restatement of my deposition testimony and I find</p> <p>9 that offensive.</p> <p>10 Q Was it my use of the term escort that</p> <p>11 offended you?</p> <p>12 A No. It was your implication that I had</p> <p>13 somehow indicated that we had done this particular</p> <p>14 thing, which was an arrest.</p> <p>15 Q All I asked is did you escort?</p> <p>16 A Ms. Katsantonis, now you're</p> <p>17 interrupting me. What I said, because I want to</p> <p>18 be very clear on the record because I don't want</p> <p>19 there to be a misunderstanding.</p> <p>20 What I said was that we had, the</p> <p>21 function of this arrest, it happened one time.</p> <p>22 Then you said, "Do you remember your deposition</p>	<p>43</p> <p>1 MR. SHOREMAN: Okay.</p> <p>2 A We frequently appear --</p> <p>3 MS. KATSANTONIS: That was my question.</p> <p>4 MR. SHOREMAN: Okay.</p> <p>5 A We frequently appear with immigrants</p> <p>6 who are appearing pursuant to an I-340 but they're</p> <p>7 appearing to an I-340 by their choice.</p> <p>8 Q And do you transport them in those</p> <p>9 situations?</p> <p>10 A We do provide travel from time to time</p> <p>11 when it's requested.</p> <p>12 I'm going to take a real quick bio</p> <p>13 break since you're taking a second to look at</p> <p>14 documents, okay?</p> <p>15 MS. KATSANTONIS: Okay.</p> <p>16 THE VIDEOGRAPHER: We are going off the</p> <p>17 record at 12:04.</p> <p>18 (Recess taken.)</p> <p>19 THE VIDEOGRAPHER: We are back on the</p> <p>20 record at 12:12.</p> <p>21 BY MS. KATSANTONIS:</p> <p>22 Q At the beginning of your deposition we</p>
<p>42</p> <p>1 testimony when you told me about someone</p> <p>2 different?"</p> <p>3 Now, Ms. Katsantonis, that is an</p> <p>4 inference that I had testified inappropriately or</p> <p>5 perhaps lied. And that's absolutely inappropriate</p> <p>6 and I'm calling you out on it because it's wrong.</p> <p>7 Q Good for you but I'm trying to</p> <p>8 understand the name -- whether it's the same</p> <p>9 person.</p> <p>10 MR. SHOREMAN: I'm trying.</p> <p>11 A I would just appreciate it if you</p> <p>12 wouldn't restate my testimony in such a way as to</p> <p>13 misstate it, please. Thank you.</p> <p>14 MR. SHOREMAN: Actually the question</p> <p>15 that the witness is answering went to the</p> <p>16 company's policy on remand, which he was</p> <p>17 describing before the line of questioning about</p> <p>18 his prior testimony.</p> <p>19 MS. KATSANTONIS: Right. I'm trying to</p> <p>20 understand, I asked whether or not Nexus escorted</p> <p>21 immigrants back to DHS pursuant to a notice of</p> <p>22 deliver.</p>	<p>44</p> <p>1 were talking about how many bonds had been issued</p> <p>2 for the Nexus Program, and I believe you told me</p> <p>3 24,000?</p> <p>4 A 23,234 is the exact number that I have.</p> <p>5 Q 23,000 --</p> <p>6 A According to our records. 23,234.</p> <p>7 Q Okay.</p> <p>8 A And to just flag it that that's what</p> <p>9 our system shows. The reality is there were a few</p> <p>10 hundred bonds that -- before we started using</p> <p>11 where you would be able to find them in Capsule</p> <p>12 and be able to sort them. So the universe doesn't</p> <p>13 include those but they'd long be canceled now</p> <p>14 anyway.</p> <p>15 Q So RLI contends that it has issued</p> <p>16 2,486 bonds. Yeah.</p> <p>17 Do you agree with that number?</p> <p>18 A That's my understanding.</p> <p>19 Q Okay. All right. And RLI contends</p> <p>20 that the aggregate penal sum of the 2,486 bonds</p> <p>21 issued is 30,222,950.</p> <p>22 Do you agree with that?</p>

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<p style="text-align: right;">45</p> <p>1 <b>A That's my understanding.</b></p> <p>2 Q How many of RLI's 2,486 bonds has DHS</p> <p>3 issued one or more formal notice to deliver?</p> <p>4 <b>A I'm going to have to consult records to</b></p> <p>5 <b>answer that.</b></p> <p>6 Q That's fine.</p> <p>7 <b>A The challenge is that I think even if I</b></p> <p>8 <b>can pull the notices, it's going to take some</b></p> <p>9 <b>time, which I'm happy to do, but it might take --</b></p> <p>10 <b>I mean, it would be pulling notices out of this</b></p> <p>11 <b>box so I don't want to take up an hour of your</b></p> <p>12 <b>deposition time but pulling these. I don't know</b></p> <p>13 <b>that I would be able -- because we don't keep</b></p> <p>14 <b>track of the number of notices per bond, so it's</b></p> <p>15 <b>not something we keep track of so I would have to</b></p> <p>16 <b>go and get that data. I'm happy to do it but I</b></p> <p>17 <b>don't want to waste your time.</b></p> <p>18 Q What data would you look at?</p> <p>19 <b>A I have, and in fact I'm going to be</b></p> <p>20 <b>producing to you, these are the breach binders.</b></p> <p>21 <b>Do you remember when you did your special master</b></p> <p>22 <b>visit to the breach office and you had identified</b></p>	<p style="text-align: right;">47</p> <p>1 <b>me to do that.</b></p> <p>2 Q So sitting here today you don't know</p> <p>3 how many of the bonds, the RLI bonds, issued</p> <p>4 have -- that DHS has issued one or more formal</p> <p>5 bond breach notices, right?</p> <p>6 MR. SHOREMAN: Objection. He can --</p> <p>7 <b>A I do have that --</b></p> <p>8 MR. SHOREMAN: Objection. Objection.</p> <p>9 That information will be provided to you if you</p> <p>10 would like him to take the time to go through the</p> <p>11 data he brought with him.</p> <p>12 MS. KATSANTONIS: Right. But I'm</p> <p>13 saying he said it's going to take him an hour or</p> <p>14 so to read through it. And I'm saying sitting</p> <p>15 here right now he doesn't know the number,</p> <p>16 correct?</p> <p>17 MR. SHOREMAN: Not off the top of his</p> <p>18 head, no.</p> <p>19 <b>A What I do know is that we've paid 290</b></p> <p>20 <b>invoices for a total of \$3,212,883.67 which is</b></p> <p>21 <b>consistent with what we track, which is</b></p> <p>22 <b>performance based on whether there's a final claim</b></p>
<p style="text-align: right;">46</p> <p>1 <b>binders that you were interested in receiving?</b></p> <p>2 <b>These are the binders and they include all the</b></p> <p>3 <b>notices for the program. So I could conceivably</b></p> <p>4 <b>go through it and count them, but I'm just telling</b></p> <p>5 <b>you that that's going to take a while and I don't</b></p> <p>6 <b>want to waste your time.</b></p> <p>7 Q That's fine.</p> <p>8 <b>A If it's that important I'm happy to do</b></p> <p>9 <b>it.</b></p> <p>10 Q So sitting here today you don't know</p> <p>11 the number, correct?</p> <p>12 <b>A It's not something that we track.</b></p> <p>13 Q And how many of RLI's 2,486 bonds have</p> <p>14 DHS issued one or more formal bond breach notice</p> <p>15 or I-340 notice?</p> <p>16 <b>A So, we are reliant upon receiving those</b></p> <p>17 <b>notices from RLI. So we have received whatever</b></p> <p>18 <b>RLI has sent us as it relates to those notices. I</b></p> <p>19 <b>don't have the total number off the top of my head</b></p> <p>20 <b>because it's not something that we track and</b></p> <p>21 <b>store. But I can certainly find it for you by</b></p> <p>22 <b>pulling through the breach notebooks if you'd like</b></p>	<p style="text-align: right;">48</p> <p>1 <b>and a bond breach has to be paid.</b></p> <p>2 <b>So that's what I can tell you. Those</b></p> <p>3 <b>are based on numbers that we keep track of. Now,</b></p> <p>4 <b>if you need me to get numbers that we don't keep</b></p> <p>5 <b>track of I can do that but it's going to take a</b></p> <p>6 <b>little bit of time. I certainly have the</b></p> <p>7 <b>information, though.</b></p> <p>8 Q Well, you have no reason to dispute</p> <p>9 what numbers RLI has provided?</p> <p>10 <b>A I don't know necessarily -- if you have</b></p> <p>11 <b>something you want to put in front of me from a</b></p> <p>12 <b>document perspective, I can certainly confirm it.</b></p> <p>13 Q Well, if I gave you a document that</p> <p>14 said RLI has received 700 notices to deliver, you</p> <p>15 don't have any reason to dispute that other than</p> <p>16 you'd have to go through that binder?</p> <p>17 <b>A I would have to go through that binder</b></p> <p>18 <b>to check. Although I certainly would say that we</b></p> <p>19 <b>have had to pay 290 invoices for RLI and a total</b></p> <p>20 <b>sum of \$3,212,833.67.</b></p> <p>21 Q Okay. And so sitting here today you</p> <p>22 also don't know how many of RLI's bonds DHS has</p>

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<p>1 issued one or more bond breach invoice for?</p> <p>2 <b>A So I do know. I have that information</b></p> <p>3 <b>but I would have to calculate it as it's not</b></p> <p>4 <b>something that we keep in the normal course of</b></p> <p>5 <b>business. I'm happy to do it. I don't want to</b></p> <p>6 <b>come to this deposition saying I don't know about</b></p> <p>7 <b>anything. So I have the documentation here and if</b></p> <p>8 <b>you want me to dig through it I'm happy to do it</b></p> <p>9 <b>but it isn't a number that we keep in the normal</b></p> <p>10 <b>course of business so I would have to -- I would</b></p> <p>11 <b>have to get it for you. But I'm more than happy</b></p> <p>12 <b>to do it if you want me to. I'll spend the next</b></p> <p>13 <b>three hours digging through a box.</b></p> <p>14 <b>Q So RLI contends that as of March 1st,</b></p> <p>15 <b>2020 DHS has issued -- hold on.</b></p> <p>16 <b>Okay. So RLI contends that 319 of the</b></p> <p>17 <b>bonds have been paid based on breach invoices.</b></p> <p>18 <b>Do you understand why there's a</b></p> <p>19 <b>difference between the 290 you're stating versus</b></p> <p>20 <b>the 319?</b></p> <p>21 <b>A There may be bonds that were refunded</b></p> <p>22 <b>or otherwise canceled after they were paid. I</b></p>	<p>1 invoices?</p> <p>2 <b>A Well, considering it seems to be an</b></p> <p>3 <b>important part of your examination, I would like</b></p> <p>4 <b>to go and look. In other words, I don't want you</b></p> <p>5 <b>to ask a question that I can't answer. You've</b></p> <p>6 <b>asked me the question in such a way as to say</b></p> <p>7 <b>isn't it true I can't answer it; no, it's not, I</b></p> <p>8 <b>can answer it and I can try to go through this box</b></p> <p>9 <b>as quickly as possible. I just gave you a</b></p> <p>10 <b>forewarning that I thought it would be take a</b></p> <p>11 <b>little bit of time and I didn't want to take your</b></p> <p>12 <b>time. That's all, Ms. Katsantonis.</b></p> <p>13 <b>Q No, I appreciate it. I'm just trying</b></p> <p>14 <b>to say you didn't do it -- before sitting here</b></p> <p>15 <b>today you haven't done that work yet.</b></p> <p>16 <b>MR. SHOREMAN: Objection. This witness</b></p> <p>17 <b>testified as to the number of invoices RLI has</b></p> <p>18 <b>paid, 290 invoices.</b></p> <p>19 <b>MS. KATSANTONIS: That's not the</b></p> <p>20 <b>question.</b></p> <p>21 <b>MR. SHOREMAN: Well, you're asking him</b></p> <p>22 <b>how many --</b></p>
<p>1 <b>wouldn't know that since RLI has stopped sending</b></p> <p>2 <b>us bond cancellations as of February of 2018. So</b></p> <p>3 <b>since we don't get that documentation from your</b></p> <p>4 <b>client anymore, I am only relying -- I'm relying</b></p> <p>5 <b>on the information we get from your client and the</b></p> <p>6 <b>information that you process, you know, pursuant</b></p> <p>7 <b>to the injunctive order. So we're paying what you</b></p> <p>8 <b>represent to us is due, your client, right, as we</b></p> <p>9 <b>go along we always do that.</b></p> <p>10 <b>What we have record of is 290 invoices</b></p> <p>11 <b>for a total of \$3,212,883.67. If you have a</b></p> <p>12 <b>different record, I'm happy to look at it.</b></p> <p>13 <b>Q If a bond is canceled there's no</b></p> <p>14 <b>payment, right?</b></p> <p>15 <b>A Well, that's correct. Yeah, the</b></p> <p>16 <b>only -- only after a breach and a final claim is</b></p> <p>17 <b>made is -- are you required to pay.</b></p> <p>18 <b>Q Uh-huh.</b></p> <p>19 <b>So sitting here today, without going</b></p> <p>20 <b>through your binder, spending a couple of hours to</b></p> <p>21 <b>go through your binders, you can't tell us how</b></p> <p>22 <b>many of the RLI bonds has DHS issued one or more</b></p>	<p>1 <b>MS. KATSANTONIS: How many have we</b></p> <p>2 <b>received -- how many -- on the RLI bonds how many</b></p> <p>3 <b>invoices have we received.</b></p> <p>4 <b>MR. SHOREMAN: How many invoices has</b></p> <p>5 <b>RLI received?</b></p> <p>6 <b>MS. KATSANTONIS: And Nexus has a</b></p> <p>7 <b>record. How many were issued?</b></p> <p>8 <b>A I think it's important to understand</b></p> <p>9 <b>this is part of our -- I think this is part of the</b></p> <p>10 <b>misunderstanding, you know, there are a lot of</b></p> <p>11 <b>misunderstandings. But the idea even that an</b></p> <p>12 <b>invoice, you're saying it yourself, you have 319</b></p> <p>13 <b>versus 290. You can't possibly explain the</b></p> <p>14 <b>discrepancy. You have an injunctive order. It's</b></p> <p>15 <b>not as if you would have allowed 29 bonds to go</b></p> <p>16 <b>unpaid. So, like, you understand that, you know,</b></p> <p>17 <b>from the perspective of the record keeping, what</b></p> <p>18 <b>we have is what we have. We keep track of the</b></p> <p>19 <b>bonds that we pay because that's how we determine</b></p> <p>20 <b>our fail rate.</b></p> <p>21 <b>Q Right?</b></p> <p>22 <b>A We don't keep track of multiple</b></p>

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<p>53</p> <p>1 notices. We don't keep track of how many notices 2 we received on a certain bond book or anything 3 like that. It's just not something that we keep 4 track of, Ms. Katsantonis, but I'm happy to get it 5 for you if you need me to.</p> <p>6 Q Okay. I get -- I understand your 7 testimony about what you don't track, okay? So 8 what I'm trying to find out today is, without 9 spending another hour or three hours or whatever 10 it would take, you do not know how many of the RLI 11 bonds DHS has issued one or more bond breach 12 invoices, correct?</p> <p>13 A No, I do have that here. I'll get it, 14 okay.</p> <p>15 Q No, I said without spending an hour.</p> <p>16 A Well, I'll try not to take an hour. 17 But I came prepared to testify. So I'm going to 18 give you your answers. If it's a question that 19 you're asking, I will give you the answer. Just 20 let me --</p> <p>21 Q How long do you think it would take you 22 to find out how many invoices have been issued on</p>	<p>55</p> <p>1 data we have of the breaches that we received. 2 So we have the breach binders, which 3 I've made copies of for you here and we're 4 producing. It is the detail of what you would 5 find in the spreadsheet.</p> <p>6 Q Right. So will the breach binders that 7 you have reflect all 290 invoices which you 8 contend have been paid?</p> <p>9 A They will.</p> <p>10 Q Okay.</p> <p>11 A That's where we got them.</p> <p>12 Q All right. And what electronic data 13 did you review also for the spreadsheet?</p> <p>14 A I believe we reviewed Laura Piispanen's 15 spreadsheets that she has sent over a period of 16 the last few years.</p> <p>17 Q Okay.</p> <p>18 A I can never say her name. I apologize 19 for butchering her name.</p> <p>20 Q Did you review the spreadsheet that was 21 prepared and provided to Erik Schneider during his 22 deposition on February 20th of this year?</p>
<p>54</p> <p>1 an RLI bond?</p> <p>2 A 15, 20 minutes.</p> <p>3 Q Okay. We'll do it at a break then. 4 RLI contends that as of March 1st, 5 2020, the aggregate penal sum of the bonds for 6 which an invoice has been paid is 3.625 million.</p> <p>7 A No, that's not my records. My records 8 are 3.212 million.</p> <p>9 Q Okay. And which specific records are 10 you relying on for the 290 breached invoices that 11 were paid?</p> <p>12 A Our internal records, which I'm 13 producing a copy of today, including a spreadsheet 14 and our breach binders where all the supporting 15 documentation is.</p> <p>16 Q And the spreadsheet was prepared when?</p> <p>17 A This spreadsheet was prepared -- it's 18 maybe March 2nd, so yesterday.</p> <p>19 Q And is it based on computer-generated 20 files? Where was the data extracted to create the 21 spreadsheet?</p> <p>22 A The breach binders and the electronic</p>	<p>56</p> <p>1 A That was provided by RLI?</p> <p>2 Q Uh-huh.</p> <p>3 A No. Would you like to --</p> <p>4 Q No.</p> <p>5 A I'm not a hundred percent sure. What 6 spreadsheet are you talking about? I've reviewed 7 many, many spreadsheets, but I don't know.</p> <p>8 Q During the deposition of Mr. Schneider, 9 a spreadsheet was presented to him showing all of 10 the -- showing the status of the RLI's bonds?</p> <p>11 A Do you have it? Can I see it?</p> <p>12 Q Do you know whether you reviewed that?</p> <p>13 A I won't know until I see the document. 14 I don't know off the top of my head, with all due 15 respect.</p> <p>16 Q All right. And of the RLI bond breach 17 invoices that were paid, do you know how many of 18 them were paid by Nexus within 30 days of the 19 invoice date?</p> <p>20 A No, we don't actually track that. And 21 as a part of that category is concerned the amount 22 of time that it would take for us to go back and</p>

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<p>57</p> <p>1 calculate that was, you know, just -- it was</p> <p>2 impossible given the fact that we'd have to go and</p> <p>3 actually look for checks, you know, dates on</p> <p>4 checks to try to match it up. So I apologize,</p> <p>5 that isn't something we keep in the normal course</p> <p>6 of business.</p> <p>7 Q Okay. So you are not prepared to</p> <p>8 answer questions on how many of the bond breach</p> <p>9 invoices were paid between, let's say, 31 and 60</p> <p>10 days of the invoice date, 61-120 days of the bond</p> <p>11 breach invoice or more than 120 days after the</p> <p>12 invoice date?</p> <p>13 MR. SHOREMAN: Objection.</p> <p>14 A I'm prep --</p> <p>15 MR. SHOREMAN: Objection. The witness</p> <p>16 has testified that the company does not maintain</p> <p>17 those records.</p> <p>18 MS. KATSANTONIS: Yep.</p> <p>19 A I'm prepared to testify that we paid</p> <p>20 290 invoices totaling \$3.212 million.</p> <p>21 Q Right. But you can't give me a timing</p> <p>22 of when those invoices were paid?</p>	<p>59</p> <p>1 after an invoice has been issued?</p> <p>2 A Nexus typically waits until we are a</p> <p>3 hundred percent certain that there is no</p> <p>4 possibility that the person's case may be</p> <p>5 reopened, that they otherwise may be able to</p> <p>6 continue on.</p> <p>7 So we do err on the side of caution to</p> <p>8 ensure that we don't pay bond breaches that would</p> <p>9 otherwise then abridge the person's opportunities</p> <p>10 to be able to proceed on bond with their case,</p> <p>11 right?</p> <p>12 Q So --</p> <p>13 A So we are very -- so we pay attention</p> <p>14 to that, for sure.</p> <p>15 Q You're a late pay.</p> <p>16 A I don't think we're a late pay. I</p> <p>17 think we pay when we have to. When there is a --</p> <p>18 I mean, when there is a claim, a final claim on</p> <p>19 the bond.</p> <p>20 Q What do you consider the final claim?</p> <p>21 A The final claim is a claim made against</p> <p>22 the bond when the appellate process has completely</p>
<p>58</p> <p>1 A We don't keep those records. We don't</p> <p>2 keep records based on that.</p> <p>3 Q Isn't it -- you don't keep records so</p> <p>4 you can't tell me sitting here today whether the</p> <p>5 invoices were paid within 31 or 60, or 90 or 120</p> <p>6 days from the invoice date; is that correct?</p> <p>7 A That's correct. Because it's</p> <p>8 inconsequential. It's a hundred percent based on</p> <p>9 what is happening in an individual case.</p> <p>10 Q Right?</p> <p>11 A It's not a metric that we would look</p> <p>12 to. It's not a KPI, it's not something we would</p> <p>13 look at saying oh, we're doing better if we do</p> <p>14 this. Because it's dependent upon an individual</p> <p>15 case. If a person has a claim of relief and they,</p> <p>16 you know, they got mixed up and they actually have</p> <p>17 court and they've got this erroneous breach, you</p> <p>18 know, they -- we want to make sure we are able to</p> <p>19 help them, right?</p> <p>20 Q Uh-huh.</p> <p>21 Does Nexus routinely not pay the</p> <p>22 invoices until at or about the 120-day period</p>	<p>60</p> <p>1 run. Right? So there's no further --</p> <p>2 Q Who makes the final claim on the bond</p> <p>3 after the appellate process? How is that made?</p> <p>4 A It's a claim in favor of the</p> <p>5 government. The government --</p> <p>6 Q How is the claim made? What does it</p> <p>7 look like?</p> <p>8 A It's an invoice.</p> <p>9 Q So the regular invoice is the final</p> <p>10 claim on the bond?</p> <p>11 A Huh-uh. A final claim on a bond is a</p> <p>12 final invoice when all of the appellate process</p> <p>13 has been exhausted.</p> <p>14 Q How does that invoice look?</p> <p>15 A And you can consult the CFR if you want</p> <p>16 to understand what a final claim is. It's in</p> <p>17 there.</p> <p>18 Q No, I want to understand what the final</p> <p>19 invoice -- have we --</p> <p>20 A My opinion is consistent with the --</p> <p>21 Q Have we received any final invoices?</p> <p>22 A -- CFR.</p>

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<p>61</p> <p>1 Q Have we received any final invoices on</p> <p>2 any RLI bonds?</p> <p>3 A I believe you've received Treasury</p> <p>4 referral notices on RLI bonds.</p> <p>5 Q Well, is that the final invoice?</p> <p>6 A No. I think there's a whole other</p> <p>7 process upon Treasury referral that RLI has never</p> <p>8 been subjected to thanks to Nexus' ability to</p> <p>9 stand in front of it --</p> <p>10 Q No. I know, but you said --</p> <p>11 A I'm sorry, and perform pursuant to the</p> <p>12 indemnity agreement over the last three or four</p> <p>13 years, which we have every single time.</p> <p>14 Q Well, you said that a claim -- that</p> <p>15 the -- a claim doesn't have to be paid until you</p> <p>16 get a final invoice. So I'm trying to understand</p> <p>17 what is this final invoice?</p> <p>18 MR. SHOREMAN: Objection.</p> <p>19 Q What does it look like? Is it in</p> <p>20 writing? What is it?</p> <p>21 MR. SHOREMAN: Objection. You have</p> <p>22 misstated his testimony.</p>	<p>63</p> <p>1 been exhausted.</p> <p>2 Q Okay.</p> <p>3 A That's a final claim. In favor of</p> <p>4 the --</p> <p>5 Q And when do you know when all the</p> <p>6 appeal opportunities have been exhausted?</p> <p>7 A So we know that there's a window of</p> <p>8 time that you have to seek an appeal or a motion</p> <p>9 to reconsider. If you file an appeal within 30 --</p> <p>10 within 30 days, you --</p> <p>11 Q Within 30 days of a notice to breach.</p> <p>12 A That's right.</p> <p>13 Q The breach notice, right?</p> <p>14 A Then you have a timely appeal that goes</p> <p>15 through the process of the AAO. If you file a</p> <p>16 nontimely appeal it can be considered by the AAO</p> <p>17 as a motion to reconsider. And sometimes they</p> <p>18 will take those cases on.</p> <p>19 Q And sometimes they won't.</p> <p>20 A And sometimes they won't.</p> <p>21 Q And how do you -- how do you know when</p> <p>22 a claim becomes final?</p>
<p>62</p> <p>1 Q Okay.</p> <p>2 A My concern is that, you know, my</p> <p>3 testimony is my own and I want to make sure that</p> <p>4 you ask questions and say isn't it -- do you mean</p> <p>5 this? Yes. I want to be very clear,</p> <p>6 Ms. Katsantonis, I'm not trying to be rude but if</p> <p>7 I think that you are misstating my testimony I'm</p> <p>8 going to stop and back up because I want to make</p> <p>9 sure we don't do that.</p> <p>10 Q Absolutely. I want you to get Nexus'</p> <p>11 testimony on the record accurately and to the best</p> <p>12 of your knowledge and belief and I'm happy to make</p> <p>13 sure that it's clear.</p> <p>14 A So --</p> <p>15 Q But you said that it -- that an invoice</p> <p>16 doesn't have to be paid until there's a final</p> <p>17 claim and there's a final invoice. So I'm trying</p> <p>18 to understand what this is? What is the final</p> <p>19 claim? What does it look like? What is the</p> <p>20 invoice that we're all waiting for?</p> <p>21 A Right. A final claim is a breach on a</p> <p>22 bond where all of the appeal opportunities have</p>	<p>64</p> <p>1 A So, again, a claim is final when</p> <p>2 there's a breach, a final determination is made on</p> <p>3 that breach and the appellate process is run.</p> <p>4 It's a --</p> <p>5 Q So how do you know?</p> <p>6 A I'm answering the same -- I mean, I'm</p> <p>7 answering the question the same way.</p> <p>8 Q Yeah.</p> <p>9 A I don't know what -- what are you</p> <p>10 asking me? Because the appeal --</p> <p>11 Q When does the appellate process run?</p> <p>12 How do you know?</p> <p>13 A Gotcha. So it's a certain window after</p> <p>14 the breach occurs. So you get a notice of a</p> <p>15 breach, you have the ability to file an appeal,</p> <p>16 okay? You can file an appeal within 30 days and</p> <p>17 then have a timely filed appeal before the AAO.</p> <p>18 You can file an appeal that's justified outside of</p> <p>19 the window and it can be considered as a motion to</p> <p>20 reopen.</p> <p>21 Q Right. But it cannot be.</p> <p>22 So my question is when do you know that</p>

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<p>1 the appeal process is done, it's run and now it's 2 time to pay? 3 <b>A So if I get a 797C then I know that the</b> 4 <b>AAO has received that appeal and I know pursuant</b> 5 <b>to the CFR that there's no final claim and that</b> 6 <b>that breach isn't due.</b> 7 <b>Q What do you mean that there's no final</b> 8 <b>claim?</b> 9 <b>A There's no final claim. Until the</b> 10 <b>appeal is up --</b> 11 <b>Q Right. I'm trying to find out --</b> 12 <b>A You can't even pay the breach.</b> 13 <b>Q I'm trying to find out when you know</b> 14 <b>the appeal is up. How do I know its up?</b> 15 <b>A You get a notice of action from the</b> 16 <b>AAO. You can get a notice of action from the AAO.</b> 17 <b>Q So the AAO denies the appeal, then is</b> 18 <b>the appeal over?</b> 19 <b>A You can appeal to the district court.</b> 20 <b>So there is an appellate process beyond that. But</b> 21 <b>my perspective is that once the AAO -- our policy</b> 22 <b>generally is once the AAO dismisses an appeal, we</b></p>	<p>65 67 1 <b>fixed. So if we know that they're ultimately</b> 2 <b>going to cancel it or if the judge is going to</b> 3 <b>reopen the case, these are one-off situations.</b> 4 <b>But I just want to be careful. I want to be</b> 5 <b>consistent and I want to be clear in my testimony.</b> 6 <b>Q All right.</b> 7 <b>THE VIDEOGRAPHER: Can you take the</b> 8 <b> mike off and put it back on again. Okay.</b> 9 <b>MS. KATSANTONIS: Is that good?</b> 10 <b>THE VIDEOGRAPHER: That's good.</b> 11 <b>(Donovan Exhibit 2 marked for</b> 12 <b>identification and attached to the transcript.)</b> 13 <b>Q I'm going to show you an exhibit that</b> 14 <b>was presented to court on January 22nd, 2020.</b> 15 <b>Have you seen this exhibit before, Mr. Donovan?</b> 16 <b>A I may have reviewed it. I don't</b> 17 <b>remember exactly. But I may have seen it. I</b> 18 <b>believe I have, yes.</b> 19 <b>Q Okay.</b> 20 <b>A This was filed at the hearing, right?</b> 21 <b>In advance of the hearing.</b> 22 <b>Q It was presented and provided as</b></p>
<p>66 1 <b>pay it. And we do that -- in fact, last month we</b> 2 <b>did that to four or five RLI bonds.</b> 3 <b>Q So once the appeal process is run and</b> 4 <b>there's an AAO decision, then there's no further</b> 5 <b>basis to delay paying an invoice; is that correct?</b> 6 <b>A If there is a motion to reconsider, if</b> 7 <b>there is a circumstance where an individual is</b> 8 <b>seeking some kind of relief, from time to time,</b> 9 <b>there are one-off situations that we look at.</b> 10 <b>Q Right, but generally?</b> 11 <b>A We're glad to say that we always stand</b> 12 <b>and perform personally to the indemnity agreement.</b> 13 <b>We do that every time.</b> 14 <b>Q So generally, though, once an AAO</b> 15 <b>appeal is denied, then there's no basis not to pay</b> 16 <b>the invoice, correct?</b> 17 <b>A Then the invoice is due.</b> 18 <b>Q Okay.</b> 19 <b>A I won't say that there's no basis not</b> 20 <b>no pay because I think that there are certain</b> 21 <b>circumstances where an individual, a human error</b> 22 <b>is an issue, and we know that it's going to be</b></p>	<p>68 1 evidence during the hearing. 2 <b>A Got it. Okay. Then I think I have</b> 3 <b>seen it.</b> 4 <b>Q Okay. And did you or Nexus endeavor to</b> 5 <b>review these facts to confirm them as true?</b> 6 <b>A I did not but that's because,</b> 7 <b>Ms. Katsantonis, I couldn't imagine that you would</b> 8 <b>file something with the court that was erroneous,</b> 9 <b>so I'm assuming that this is correct. And I</b> 10 <b>believe you're a professional and I believe you're</b> 11 <b>a great person so I'm sure you wouldn't have lied</b> 12 <b>to the court, so I would presume this is correct.</b> 13 <b>Q Thank you. So as you sit here today,</b> 14 <b>you have no reason to dispute the accuracy of the</b> 15 <b>data in this chart?</b> 16 <b>A Absolutely no reason to believe that</b> 17 <b>you would put a forged document in front of the</b> 18 <b>court. No reason at all.</b> 19 <b>Q All right. Thank you.</b> 20 <b>A You're welcome.</b> 21 <b>Q So I'm looking at it and I'm looking</b> 22 <b>specifically at first --</b></p>

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<p>69</p> <p>1 <b>A I'm still offended by the title.</b></p> <p>2 Q First --</p> <p>3 MR. SHOREMAN: Oh, yeah.</p> <p>4 Q Looking at page 2.</p> <p>5 <b>A Yes, ma'am.</b></p> <p>6 Q So looking at, like, starting with</p> <p>7 August, I'm going to start with the ones we know</p> <p>8 AAO appeal was filed for these invoices?</p> <p>9 <b>A Okay.</b></p> <p>10 Q The invoice dates were June 25th and</p> <p>11 payments weren't received until October or</p> <p>12 November on the first three, August 9th,</p> <p>13 September 10th, September 10th.</p> <p>14 Do you have an understanding as to why</p> <p>15 those invoices would not have been paid prior to</p> <p>16 the 120 Treasury referral date?</p> <p>17 <b>A So not off the top of my head, but I</b></p> <p>18 <b>would have to -- so if there is a client who has</b></p> <p>19 <b>filed a motion to reopen with their immigration</b></p> <p>20 <b>lawyer sometimes we won't file an AAO appeal</b></p> <p>21 <b>because once the motion to reopen is granted, the</b></p> <p>22 <b>bond unit officer typically reinstates the bond or</b></p>	<p>71</p> <p>1 <b>A Well, it certainly appears to be</b></p> <p>2 <b>correct vis-à-vis the dates on this paper although</b></p> <p>3 <b>I think it's important, Ms. Katsantonis, to</b></p> <p>4 <b>understand that in these cases where you have an</b></p> <p>5 <b>AAO appeal dismissed almost simultaneously with</b></p> <p>6 <b>the date that it's due, sometimes if we're not --</b></p> <p>7 <b>sometimes it takes a while to get those adverse</b></p> <p>8 <b>action notices and we're relying on service of</b></p> <p>9 <b>notice from RLI or from the co-obligor. So what</b></p> <p>10 <b>I'm going to tell you is that from time to time we</b></p> <p>11 <b>have invoices where we appeal them, the appeal is</b></p> <p>12 <b>dismissed, we don't know that the appeal is</b></p> <p>13 <b>dismissed and then we get a final invoice or the</b></p> <p>14 <b>Treasury referral and we look at it and we go oh,</b></p> <p>15 <b>that appeal is dismissed. This may be that case</b></p> <p>16 <b>but I again wouldn't know without going in and</b></p> <p>17 <b>looking at the individual client.</b></p> <p>18 Q Well, we can show you, and it was</p> <p>19 presented at the hearing that, RLI was giving</p> <p>20 continuous notice to Nexus to pay these bond</p> <p>21 breaches. So I don't think that was the scenario.</p> <p>22 <b>A Listen, I'm not going to contest that</b></p>
<p>70</p> <p>1 <b>canceled the breach.</b></p> <p>2 Q But you don't have any reason --</p> <p>3 <b>A I'm happy to look them up.</b></p> <p>4 Q -- to know that.</p> <p>5 <b>A I'm happy to look them up and can</b></p> <p>6 <b>probably do that pretty quick.</b></p> <p>7 Q But you don't know right now, correct?</p> <p>8 <b>A Not off the top of my head as you</b></p> <p>9 <b>pointed out in the three lines on that</b></p> <p>10 <b>spreadsheet, no.</b></p> <p>11 Q All right. So looking starting at the</p> <p>12 bottom, September 10th.</p> <p>13 <b>A Yes, ma'am.</b></p> <p>14 Q So this one is an invoice was</p> <p>15 July 30th, do you see that the AAO appeal was</p> <p>16 already dismissed on July 23rd prior to the</p> <p>17 invoice date being issued?</p> <p>18 <b>A I do see that, yeah.</b></p> <p>19 Q Okay. And so contrary, I think to what</p> <p>20 you just stated earlier, isn't it that Nexus did</p> <p>21 not make that payment until almost four months</p> <p>22 later from the invoice date?</p>	<p>72</p> <p>1 <b>RLI gives us continuous notices to pay bond</b></p> <p>2 <b>breaches. What I will say is that if we thought</b></p> <p>3 <b>that the breach was appealed, we wouldn't have</b></p> <p>4 <b>paid it until we knew that it wasn't appealed.</b></p> <p>5 <b>And so if we didn't -- I don't know when we got</b></p> <p>6 <b>the notice of action and I'd have to look it up to</b></p> <p>7 <b>see when we got the notice of action to be able to</b></p> <p>8 <b>answer this question more intelligently. But</b></p> <p>9 <b>certainly I'm telling you that it often happens</b></p> <p>10 <b>where if we don't get -- if we don't get notice of</b></p> <p>11 <b>the adverse action, we don't know that the appeal</b></p> <p>12 <b>is brought in until we get that notice.</b></p> <p>13 Q Well, if RLI had information that the</p> <p>14 appeal had run, you certainly had the information</p> <p>15 that the appeal had run, right? Didn't you</p> <p>16 provide that information?</p> <p>17 <b>A So it depends. The -- well, and it's</b></p> <p>18 <b>frustrating to me, too, because I have to rely on</b></p> <p>19 <b>your client to get me data and details from the</b></p> <p>20 <b>federal government. Because while I'm responsible</b></p> <p>21 <b>for standing in front of your client, your client</b></p> <p>22 <b>is responsible for getting me documents.</b></p>

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<p>73</p> <p>1 Q Okay. But Mr. --</p> <p>2 A We haven't gotten a copy of a bond</p> <p>3 cancellation since February of 2018. It is now</p> <p>4 March of 2020. You haven't sent us bond</p> <p>5 cancellations in two years.</p> <p>6 Q Mr. Donovan?</p> <p>7 A So I'm nervous about answering</p> <p>8 questions based on what documents we've received</p> <p>9 when you're not sending me the documents.</p> <p>10 Q Aren't these appeals being handled in</p> <p>11 the name of Big Marco but by your law firm that</p> <p>12 you pay?</p> <p>13 A That's correct.</p> <p>14 Q Right. So you would have that</p> <p>15 information whether an appeal has run or not.</p> <p>16 A So and a notice of action, yes. We</p> <p>17 would typically get it.</p> <p>18 Q Right.</p> <p>19 A Although sometimes they will send</p> <p>20 information to the obligor because as you well</p> <p>21 know, Ms. Katsantonis, from your read of the I352,</p> <p>22 they have the option of serving notice to</p>	<p>75</p> <p>1 me.</p> <p>2 MR. SHOREMAN: Objection.</p> <p>3 Q But you're supposed to answer the</p> <p>4 questions I ask.</p> <p>5 A The way you want them.</p> <p>6 Q No.</p> <p>7 MR. SHOREMAN: You may not be</p> <p>8 interested, Ms. Katsantonis.</p> <p>9 MS. KATSANTONIS: Go ahead.</p> <p>10 MR. SHOREMAN: If you want to ask him</p> <p>11 questions, you asked him three at a time, which</p> <p>12 one do you --</p> <p>13 MS. KATSANTONIS: He answered one and</p> <p>14 then I asked the next one. I said aren't these</p> <p>15 being filed in the name of Big Marco. Yes. And</p> <p>16 aren't those for Nexus --</p> <p>17 MR. SHOREMAN: Let me suggest you let</p> <p>18 him finish his answer before you ask the next one.</p> <p>19 A So what will happen is a bond -- let me</p> <p>20 be very -- I'm going to try to break this down to</p> <p>21 a very basic level because I want to make sure</p> <p>22 that we're all on the same page. A bond appeal is</p>
<p>74</p> <p>1 either/or.</p> <p>2 Q These are appeals that are being filed</p> <p>3 by Big Marco, right?</p> <p>4 A Right.</p> <p>5 Q And that Nexus is providing the legal</p> <p>6 services for these appeals, right?</p> <p>7 A Right.</p> <p>8 Q So --</p> <p>9 A Ms. Katsantonis, I think --</p> <p>10 Q And paying for the appeals, correct?</p> <p>11 A Okay. So is that --</p> <p>12 Q Is that correct?</p> <p>13 A I need to answer your question.</p> <p>14 MR. SHOREMAN: There's three questions.</p> <p>15 A You've asked multiple questions and I</p> <p>16 understand what you're doing, you're trying to</p> <p>17 establish a narrative but it's a false narrative.</p> <p>18 Q I'm not trying to establish a</p> <p>19 narrative. I'm trying to ask you did Big Marco</p> <p>20 file those appeals.</p> <p>21 A It's a deposition and I think I'm</p> <p>22 supposed to answer questions, you've got to let</p>	<p>76</p> <p>1 filed, okay? And I797 fee is issued. That can be</p> <p>2 sent and counsel might get that three or four</p> <p>3 months after it's filed. It's not always</p> <p>4 instantaneous. So when I tell you that we're --</p> <p>5 we only know what we know based on what we're</p> <p>6 getting, we don't always get the documentation</p> <p>7 from government. The AAO is notoriously slow,</p> <p>8 okay? So we will, from time to time, and it has</p> <p>9 happened, I don't know if it's this case, but I</p> <p>10 can certainly look, but we have had situations</p> <p>11 where we have an appeal. We don't get a notice of</p> <p>12 action.</p> <p>13 Q I'm not talking about a one-off case.</p> <p>14 A Ms. Katsantonis, I'm talking. This</p> <p>15 happens often?</p> <p>16 Q No, I know.</p> <p>17 A It may very well be this case. What</p> <p>18 happens is an appeal is denied. We don't get the</p> <p>19 notice. RLI gets notice from the government of a</p> <p>20 referral to Treasury. You come to us and say, "We</p> <p>21 have this bond. It is now referred to Treasury as</p> <p>22 of this date."</p>

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<p>77</p> <p>1 And I say, "No. We have an appeal on</p> <p>2 this bond."</p> <p>3 And then I go and try to, you know, get</p> <p>4 the law firm to communicate with the AAO to find</p> <p>5 out if there's a negative position.</p> <p>6 Q Okay.</p> <p>7 A And sometimes there is and we didn't</p> <p>8 get served it. So what I'm saying is I don't</p> <p>9 know, based on the facts here, whether that was</p> <p>10 this case or not but it does happen.</p> <p>11 Q Okay. But in this case you had four</p> <p>12 and a half months to pay?</p> <p>13 A I haven't looked at this case, as I</p> <p>14 said, Ms. Katsantonis, I'm happy to do it. If</p> <p>15 we're going to talk about this case I'm going to</p> <p>16 look at it and I'm going to talk about this case.</p> <p>17 Q I'm not --</p> <p>18 A I'm not going to testify as to the</p> <p>19 delay without being able to testify as to why.</p> <p>20 Q My point is, isn't it true that Nexus,</p> <p>21 and you can flip the page to the next page.</p> <p>22 A I think I'd like to review the records</p>	<p>79</p> <p>1 Q But isn't it true, Mr. Donovan --</p> <p>2 A We paid these breaches --</p> <p>3 Q -- that those breaches weren't --</p> <p>4 A You're interrupting me.</p> <p>5 We paid these breaches when they were</p> <p>6 referred to Treasury.</p> <p>7 Q No. Right. But they weren't paid when</p> <p>8 RLI requested, correct?</p> <p>9 A I would have to -- I would have to</p> <p>10 review the record. Do you have the --</p> <p>11 Q Well, you know. Yeah, I have --</p> <p>12 A We ultimately --</p> <p>13 Q I have records that show that you did</p> <p>14 not pay them.</p> <p>15 A We did pay them.</p> <p>16 Q When they were requested by RLI?</p> <p>17 A But we did pay them.</p> <p>18 Q Not when requested by RLI, correct?</p> <p>19 A But we did pay them when they became --</p> <p>20 when they were due.</p> <p>21 Q You're not answering my question,</p> <p>22 Mr. Donovan.</p>
<p>78</p> <p>1 on that client to answer your question.</p> <p>2 Q Well, keep going because there's more.</p> <p>3 So go to the next page. There is a whole litany</p> <p>4 of, right, on page 3 there's one, two, three,</p> <p>5 four, five, six bonds which the AAO appeal was</p> <p>6 dismissed months prior to the Nexus' payment,</p> <p>7 right?</p> <p>8 A Again, I don't --</p> <p>9 Q According to the chart.</p> <p>10 A I don't know the details here.</p> <p>11 Q Right. I'm just asking you --</p> <p>12 A What I --</p> <p>13 Q Mr. Donovan --</p> <p>14 A What I do know is I'm -- as the</p> <p>15 president and CEO of Nexus Services, I'm proud of</p> <p>16 the fact that we're sitting here in a deposition</p> <p>17 and all you can ask me about are payments that</p> <p>18 were made. Because as I said before, we stand in</p> <p>19 front of RLI and this --</p> <p>20 Q That's not my question, Mr. Donovan.</p> <p>21 A -- indemnity agreement, every single</p> <p>22 time and that's what we do here.</p>	<p>80</p> <p>1 A We paid them for --</p> <p>2 Q Did you pay them at the time RLI</p> <p>3 requested payments?</p> <p>4 A We paid them pursuant to --</p> <p>5 MR. SHOREMAN: Are you talking about</p> <p>6 these three? Which ones are you talking about?</p> <p>7 Are you talking about all the bonds? Or the bonds</p> <p>8 here? Be more specific here.</p> <p>9 Q Well, let me just start -- let me just</p> <p>10 break it down. RLI has repeatedly requested that</p> <p>11 Nexus pay invoices within 30 days of the invoice,</p> <p>12 right?</p> <p>13 A I believe they have and I've explained</p> <p>14 to RLI why that's not functionally possible.</p> <p>15 Q Right. So Nexus has not complied with</p> <p>16 that request, right.</p> <p>17 A It's an inappropriate -- improper</p> <p>18 request. We have bonds that are on appeal. We're</p> <p>19 waiting.</p> <p>20 Q Okay. So improper or not, you have</p> <p>21 not --</p> <p>22 A It's part of our bad faith allegation</p>

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<p>81</p> <p>1 for sure.</p> <p>2 Q Okay. So improper or not, you have not</p> <p>3 paid invoices when requested by RLI, correct?</p> <p>4 A I haven't complied with unreasonable</p> <p>5 requests from RLI.</p> <p>6 Q All right. Again, you're not -- you're</p> <p>7 throwing in -- I'm just trying to ask --</p> <p>8 MR. SHOREMAN: Objection.</p> <p>9 Q We've asked that the invoices be paid</p> <p>10 in 30 days, correct?</p> <p>11 A If the request is erroneous, I'm not</p> <p>12 going to do it. And I'm not going to pretend like</p> <p>13 I've done something wrong by not -- you know,</p> <p>14 destroying some program participants life because</p> <p>15 RLI wants to get off some perceived liability</p> <p>16 faster. It's absolutely insane. These are</p> <p>17 people's lives that we're talking about here.</p> <p>18 Human beings.</p> <p>19 Q So Nexus has not paid invoices by the</p> <p>20 time requested by RLI, correct?</p> <p>21 MR. SHOREMAN: In what -- that's --</p> <p>22 objection.</p>	<p>83</p> <p>1 A Right. We have paid the invoices. We</p> <p>2 may not have paid them immediately upon RLI's</p> <p>3 demand, in many instances because RLI's demand was</p> <p>4 unreasonable.</p> <p>5 Q And not within the time that RLI</p> <p>6 requested that they be paid, correct?</p> <p>7 MR. SHOREMAN: Asked and answered.</p> <p>8 A I just said that. I just said that.</p> <p>9 Q So that's correct, correct?</p> <p>10 MR. SHOREMAN: Object.</p> <p>11 A I don't think so. My answer is my</p> <p>12 answer.</p> <p>13 MR. SHOREMAN: I think that -- correct,</p> <p>14 correct is a double entendre.</p> <p>15 Q The request is very simple. RLI</p> <p>16 requests payments be paid within 30 days. You</p> <p>17 haven't applied that, correct?</p> <p>18 A Yes. It's an improper request. I'm</p> <p>19 not going to pay and just abridge somebody's case</p> <p>20 and screw somebody's life because RLI wants us to</p> <p>21 pay an invoice --</p> <p>22 Q Right.</p>
<p>82</p> <p>1 A I --</p> <p>2 MR. SHOREMAN: Objection. Can you --</p> <p>3 are you referring to the invoices in Exhibit 2?</p> <p>4 MS. KATSANTONIS: Any of the invoices.</p> <p>5 Q Has Nexus paid the invoices at the time</p> <p>6 requested by RLI?</p> <p>7 MR. SHOREMAN: Asked and answered.</p> <p>8 Asked and answered. Go ahead. Answer it again.</p> <p>9 A I'm sure RLI would like us to pay</p> <p>10 faster in some cases. But I can say I'm happy to</p> <p>11 say that we've paid every single time we were</p> <p>12 supposed to.</p> <p>13 Q Right. But again --</p> <p>14 A And RLI has lost no money and yet we're</p> <p>15 still in year two and a half of this abusive</p> <p>16 litigation when your client hasn't lost a dollar.</p> <p>17 Hasn't lost a dollar.</p> <p>18 Q Isn't it true, Mr. Donovan, that Nexus</p> <p>19 has not -- has consistently not paid the RLI</p> <p>20 invoices upon RLI's request that the invoices be</p> <p>21 paid?</p> <p>22 MR. SHOREMAN: Asked and answered.</p>	<p>84</p> <p>1 A -- faster. That's nonsensible.</p> <p>2 Q That's all I'm looking for is you to</p> <p>3 say yes. You have not paid at RLI's request.</p> <p>4 A What I said was we've always paid</p> <p>5 invoices. We've absolutely always paid invoices.</p> <p>6 Q Right. But not when requested by RLI?</p> <p>7 MR. SHOREMAN: Asked and answered.</p> <p>8 A Because those requests are</p> <p>9 unreasonable.</p> <p>10 Q Can you just say yes rather than</p> <p>11 because?</p> <p>12 A Yes. Because the requests are</p> <p>13 unreasonable.</p> <p>14 Q Thank you.</p> <p>15 A Thank you.</p> <p>16 MR. SHOREMAN: Thank you.</p> <p>17 Q And in fact, there were invoices that</p> <p>18 the court had ordered to be paid within 60 days</p> <p>19 and RLI -- and excuse me, Nexus did not pay those</p> <p>20 on time within the 60 days of an invoice, correct?</p> <p>21 A Do you have a list of the ones that</p> <p>22 you're referring to? May I see it, please.</p>

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<p>85</p> <p>1 I'll have her mark it?</p> <p>2 Q Yes, thank you.</p> <p>3 (Donovan Exhibit 3 marked for</p> <p>4 identification and attached to the transcript.)</p> <p>5 Q So this list is a list of invoices that</p> <p>6 had not been paid by Nexus as of the January 22nd,</p> <p>7 2020 hearing before Judge Urbanski?</p> <p>8 A Are any of these still outstanding?</p> <p>9 Q That's not my question.</p> <p>10 A No. I'm asking you.</p> <p>11 Q My question -- I'm not going to answer</p> <p>12 questions. I'm not being deposed.</p> <p>13 A Because they're not, okay?</p> <p>14 Q My question is do you have an</p> <p>15 understanding that the invoices listed on this</p> <p>16 summary page were not paid as of the January 22nd,</p> <p>17 '20 hearing?</p> <p>18 A My understanding is that these invoices</p> <p>19 have been paid.</p> <p>20 Q No?</p> <p>21 A I'm not -- I'm not done,</p> <p>22 Ms. Katsantonis, please.</p>	<p>87</p> <p>1 document in front of the court that's improper.</p> <p>2 What dates the payments were made, I don't know.</p> <p>3 Q Right. But you have no evidence or no</p> <p>4 reason to dispute the facts set forth in this</p> <p>5 summary of Nexus' contempt by failure to pay past</p> <p>6 due invoices?</p> <p>7 A Only insofar as the document seems to</p> <p>8 leave unclear whether the balances have been paid</p> <p>9 and I think that's an important issue.</p> <p>10 Q You mean as of today?</p> <p>11 A Correct.</p> <p>12 Q But we're using this as of</p> <p>13 January 22nd, 2020.</p> <p>14 A But my biggest concern is that I comply</p> <p>15 with the provisions of the general indemnity</p> <p>16 agreement. So if I am not compliant -- if any of</p> <p>17 these are outstanding, you need to let me know so</p> <p>18 I can pay your client and comply with the general</p> <p>19 indemnity agreement.</p> <p>20 Q I'm asking you, though, to the best of</p> <p>21 your knowledge, you have no reason to dispute that</p> <p>22 these invoices had not been paid as of</p>
<p>86</p> <p>1 Q Sorry.</p> <p>2 A I'm not aware of whether they were paid</p> <p>3 before the hearing or not, but I am under the</p> <p>4 impression and knowledge that these are paid and</p> <p>5 if they aren't you need to let me know that so I</p> <p>6 can pay them.</p> <p>7 Q So you received a copy of this chart</p> <p>8 after the hearing.</p> <p>9 A I'm sure I did, yeah.</p> <p>10 Q All right. And did you review it with</p> <p>11 your records to ensure it was accurate?</p> <p>12 A Yeah. Although admittedly I review a</p> <p>13 lot of records.</p> <p>14 Q Okay. And so you have no reason to</p> <p>15 dispute that these invoices have not been paid as</p> <p>16 of the January 22nd, 2020 hearing, correct?</p> <p>17 A Well, so, you know my prior</p> <p>18 qualification would certainly apply although I</p> <p>19 don't know that that's what this spreadsheet</p> <p>20 represents to the court. So -- but I'm not sure</p> <p>21 of the payment date but I don't know. I'm sure</p> <p>22 you're not lying to me. I'm sure you didn't put a</p>	<p>88</p> <p>1 January 22nd, 2020?</p> <p>2 A To the best of my knowledge, this</p> <p>3 spreadsheet is accurate as it's dated as of --</p> <p>4 dated as of January 21st, 2020, and to the best of</p> <p>5 my knowledge all of these invoices have been paid.</p> <p>6 Q Since?</p> <p>7 (Donovan Exhibit 4 marked for</p> <p>8 identification and attached to the transcript.)</p> <p>9 A I like the color coding. I wonder what</p> <p>10 burnt orange means? I'm trying to figure out your</p> <p>11 color coding.</p> <p>12 Q There is no reason. Trying to</p> <p>13 distinguish them out so we don't get them</p> <p>14 confused.</p> <p>15 I handed you another chart that was</p> <p>16 presented to the court, it was marked Plaintiff's</p> <p>17 Exhibit 3, and it's the summary of RLI bond</p> <p>18 demands and Nexus responses.</p> <p>19 Do you see that?</p> <p>20 A I do see that.</p> <p>21 MR. SHOREMAN: What exhibit is that to</p> <p>22 the deposition?</p>

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<p>89</p> <p>1 THE WITNESS: Exhibit 4.</p> <p>2 MR. SHOREMAN: This is 4?</p> <p>3 THE WITNESS: Yes, sir.</p> <p>4 Q And this is another chart that was</p> <p>5 presented at the January 22nd, 2020 hearing.</p> <p>6 And -- right. And as you sit here today, do you</p> <p>7 have any reason to dispute the facts set forth in</p> <p>8 this chart that was presented to the court?</p> <p>9 MR. SHOREMAN: Ms. Katsantonis, could</p> <p>10 you explain what this chart is? I know it's</p> <p>11 presented to the court but I don't believe this</p> <p>12 witness has an explanation of what the chart</p> <p>13 actually relates to.</p> <p>14 Q Did you review this chart after the</p> <p>15 hearing, Mr. Donovan?</p> <p>16 A I think I've seen it. I'm not -- it</p> <p>17 looks like -- so what we're talking about each</p> <p>18 line is grouping multiple invoices together and</p> <p>19 giving a narrative about what happened with those</p> <p>20 groups of invoices, right.</p> <p>21 Q Well, it's -- right. It's basically</p> <p>22 saying here's when RLI issued a demand letter</p>	<p>91</p> <p>1 paid all of these invoices.</p> <p>2 If I haven't let me know so I can make</p> <p>3 good on the indemnity agreement.</p> <p>4 Q So RLI contends that as of March 1st,</p> <p>5 2020, DHS has issued formal notices of</p> <p>6 cancellation on 399 of RLI's 2,486 bonds.</p> <p>7 Do you dispute that figure?</p> <p>8 A Let me -- can you give me a second?</p> <p>9 Q Sure.</p> <p>10 A Thanks. I don't have any reason to</p> <p>11 dispute that.</p> <p>12 Q Okay.</p> <p>13 A I would just say that I rely on your</p> <p>14 client to send cancellations and since they</p> <p>15 stopped sending them in February of 2018, there's</p> <p>16 no way for me to know what cancellations we've</p> <p>17 received since. And so I am a hundred percent</p> <p>18 flying blind and relying on your client's</p> <p>19 representations.</p> <p>20 Although I would very much like to</p> <p>21 continue to receive bond cancellations, so perhaps</p> <p>22 you could pass that on because they are very</p>
<p>90</p> <p>1 pursuant to the court order?</p> <p>2 A Right.</p> <p>3 Q And then there's a payment deadline</p> <p>4 pursuant to the court order.</p> <p>5 A So, yeah, I can -- so based on my</p> <p>6 ability to read the spreadsheet, I can understand</p> <p>7 what it's saying.</p> <p>8 Q Right.</p> <p>9 A I don't have independent knowledge of</p> <p>10 the spreadsheet, but I'm happy to answer questions</p> <p>11 about it.</p> <p>12 Q Right. But you had an opportunity</p> <p>13 to -- Nexus had an opportunity to review this</p> <p>14 information and you have no reason --</p> <p>15 A Correct. It was filed in court so we</p> <p>16 would have received a copy of it. I would have</p> <p>17 reviewed it. I didn't flag it as something that,</p> <p>18 you know...</p> <p>19 Q Right. And Nexus has no reason to</p> <p>20 dispute the facts set forth in this chart; is that</p> <p>21 correct?</p> <p>22 A That's correct. And I believe we've</p>	<p>92</p> <p>1 helpful in understanding, you know, being able to</p> <p>2 communicate to clients that, you know,</p> <p>3 congratulations on success of their case. We</p> <p>4 don't get those. We don't know.</p> <p>5 Q So let me ask you, and you stated that</p> <p>6 Nexus is not keeping track of how many notice of</p> <p>7 cancellation. You're relying on RLI's number,</p> <p>8 right?</p> <p>9 A Well, we don't get them. There's no</p> <p>10 way for us to keep track. All we can do is rely</p> <p>11 on you. When your client doesn't send us the</p> <p>12 cancellations, we're out of luck.</p> <p>13 Q Okay.</p> <p>14 A There's no other way for us to get</p> <p>15 them.</p> <p>16 Q And if RLI contends that the aggregate</p> <p>17 penal sum of the 399 bonds for which a notice of</p> <p>18 cancellation was received is 5,219,000, you do not</p> <p>19 dispute that figure either, correct?</p> <p>20 A It sounds about right based on average</p> <p>21 bond amount. But, you know, wouldn't know, but</p> <p>22 wouldn't necessarily think it's a lie either.</p>

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<p>93</p> <p>1 Q Okay.</p> <p>2 A But wouldn't know because I don't have</p> <p>3 the documents.</p> <p>4 Q So if we used your number that -- of</p> <p>5 the bonds that we know the disposition of for RLI,</p> <p>6 that RLI issued, 290 have been paid, right, using</p> <p>7 your numbers?</p> <p>8 A Right.</p> <p>9 Q And 399 have been canceled?</p> <p>10 A Right.</p> <p>11 Q Right.</p> <p>12 A Using those numbers, right?</p> <p>13 Q And the remainder we don't know the</p> <p>14 disposition yet.</p> <p>15 A Right.</p> <p>16 Q Okay. So if you -- the ones that we</p> <p>17 know the disposition of, am I right, if you added</p> <p>18 the 290 plus the 399 -- 290 plus the 399, that's</p> <p>19 689 out of the 2,486 RLI bonds that we currently</p> <p>20 know the disposition of based on Nexus' number,</p> <p>21 correct?</p> <p>22 A Based on Nexus' number of paid.</p>	<p>95</p> <p>1 number of bonds that are written, not by the</p> <p>2 number of bonds that are canceled. And it's</p> <p>3 especially true given the fact that I don't even</p> <p>4 get cancellations from your client.</p> <p>5 Q Well, you're --</p> <p>6 MR. SHOREMAN: Wait, objection.</p> <p>7 MS. KATSANTONIS: Sorry. You're right.</p> <p>8 A It's impossible for me to address that.</p> <p>9 I don't know that bucket of information and have</p> <p>10 no knowledge of that number. And B, it doesn't</p> <p>11 matter. The two numbers don't relate to each</p> <p>12 other at all.</p> <p>13 Q Well --</p> <p>14 A It matters if you're calculating the</p> <p>15 total number of closed cases.</p> <p>16 Q Right.</p> <p>17 A And certainly you could calculate that.</p> <p>18 But that has nothing to do with the</p> <p>19 failure or success rate of a program.</p> <p>20 Q Okay. So you're taking -- so let's go</p> <p>21 to the failure rate for a minute --</p> <p>22 A Uh-huh.</p>
<p>94</p> <p>1 Q Right.</p> <p>2 A It's the larger number there is</p> <p>3 canceled. And since I'm not getting</p> <p>4 cancellations, I can't confirm that.</p> <p>5 Q Right. Okay. But uses Nexus' paid</p> <p>6 number.</p> <p>7 A Right.</p> <p>8 Q So if we used your paid number, then</p> <p>9 since -- then if you said 290 out of the 689 bonds</p> <p>10 that we know the disposition of, that would equal</p> <p>11 42 percent of the bonds have been paid for which</p> <p>12 we know their disposition; is that correct?</p> <p>13 A I suppose. Although I'm not really</p> <p>14 sure that that number makes any sense.</p> <p>15 We should -- you know, we're looking</p> <p>16 at -- I'm not sure why looking at the number of</p> <p>17 bonds paid versus the number of bonds canceled,</p> <p>18 when I don't even have an independent</p> <p>19 understanding of that number because I haven't</p> <p>20 gotten cancellations for two years. I don't know</p> <p>21 that it makes much sense.</p> <p>22 A fail rate is your failure by the</p>	<p>96</p> <p>1 Q -- your failure rate of a program.</p> <p>2 What is Nexus' failure rate of its</p> <p>3 program?</p> <p>4 A Our failure rate's 2.38 percent.</p> <p>5 Q Okay. And how is that number</p> <p>6 calculated?</p> <p>7 A That's calculated by determining the</p> <p>8 total liability of bonds that Nexus has secured</p> <p>9 and the total invoices paid based on that</p> <p>10 liability.</p> <p>11 Q Okay. So you're saying, for what, for</p> <p>12 all of the bond programs since 2015.</p> <p>13 A Correct.</p> <p>14 Q So you're using your -- I don't</p> <p>15 remember the number, 23,000 number.</p> <p>16 A Yeah, right, but it's dollar amount.</p> <p>17 Dollar amount. If you're calculating the breach,</p> <p>18 the fail rate, it really has to be dollar amount</p> <p>19 because number of bonds, depending on the amount</p> <p>20 of the bonds. In other words --</p> <p>21 Q Aren't these people? Why are you</p> <p>22 counting the dollar amount?</p>

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<p>97</p> <p>1 A Because that's what ultimately you have</p> <p>2 to pay. If you're calculating a fail rate based</p> <p>3 on dollars and cents, then you would calculate it</p> <p>4 that way, right? The fail rate is based on the</p> <p>5 amount of money that Nexus has to pay for RLI for</p> <p>6 bonds that breach, right?</p> <p>7 Q Okay. So --</p> <p>8 A Why wouldn't you think about dollars?</p> <p>9 This whole case is about dollars. If you want to</p> <p>10 make -- if you want to stop talking about dollars</p> <p>11 and start talking about people, you're going to</p> <p>12 have a best friend right here. Because I'm a</p> <p>13 hundred percent about that. This case is about</p> <p>14 money and it's about money that we are paying.</p> <p>15 The shocking reality of this case,</p> <p>16 Ms. Katsantonis --</p> <p>17 Q I don't need --</p> <p>18 A -- is that we have stood and done</p> <p>19 everything that we were supposed to do pursuant to</p> <p>20 this general indemnity agreement --</p> <p>21 Q All right.</p> <p>22 A -- for the last three years. And we're</p>	<p>99</p> <p>1 Nexus has paid in bond breaches?</p> <p>2 A Right. The total that we considered</p> <p>3 was 11,477,712. The documentation for which is in</p> <p>4 the bond breach notebooks that I'm producing</p> <p>5 today.</p> <p>6 Q Are there payments that you didn't</p> <p>7 consider in that number?</p> <p>8 A No. This is representative of Nexus'</p> <p>9 payments of invoice bonds.</p> <p>10 Q All right. And so you're --</p> <p>11 A So these are true dollars.</p> <p>12 Q Okay. So if using your fail rate</p> <p>13 analogy, how many RLI -- what -- you agree that</p> <p>14 the penal sum of the RLI bonds was 30 million?</p> <p>15 A That's correct.</p> <p>16 Q And how many have been paid?</p> <p>17 A \$3,212,883.67.</p> <p>18 Q So then under your calculation of a</p> <p>19 fail rate, RLI has had at least a 10 percent or</p> <p>20 more fail rate, correct?</p> <p>21 A Which is -- now you'll understand why I</p> <p>22 have a bad faith claim and I've been screaming for</p>
<p>98</p> <p>1 in this abusive litigation. We're talking about</p> <p>2 dollars and then you ask me are these people not</p> <p>3 dollars? Are you kidding me?</p> <p>4 Q Okay.</p> <p>5 A You just put several spreadsheets in</p> <p>6 front of me that are all about dollars.</p> <p>7 Q I'm just trying to understand how</p> <p>8 you're calculating.</p> <p>9 A And I'm telling you.</p> <p>10 Q So let's just go back to that, okay?</p> <p>11 A Uh-huh.</p> <p>12 Q Let me just understand how you're</p> <p>13 calculating your fail rate. I just want to know</p> <p>14 how you're doing it. So you're saying that there</p> <p>15 was 23 -- you took the 23,234 bonds issued and you</p> <p>16 took the total value of those bonds?</p> <p>17 A That's correct.</p> <p>18 Q And what is the total value of those</p> <p>19 bonds?</p> <p>20 A \$481,928,000.</p> <p>21 Q Okay. So you took the total value of</p> <p>22 those bonds and then you have deducted how much</p>	<p>100</p> <p>1 your client to allow me --</p> <p>2 Q Can you just answer my question?</p> <p>3 A Yes. But your client has refused to</p> <p>4 allows us to contest these breaches. Your client</p> <p>5 has created the crisis that they're now screaming</p> <p>6 about. And, oh, by the way, I've stood in front</p> <p>7 of them, even though they created the crisis and I</p> <p>8 paid the breaches that they caused by not --</p> <p>9 Q What crisis has --</p> <p>10 A -- by not allowing -- not allowing us</p> <p>11 to contest these breaches. If we had --</p> <p>12 Q Isn't Big Marco contesting the</p> <p>13 breaches?</p> <p>14 A No, he's appealing. Ms. Katsantonis,</p> <p>15 the surety has to sign a letter for allowing you</p> <p>16 to contest the breach with the bond unit.</p> <p>17 Otherwise, the only thing the co-obligor can do is</p> <p>18 file an appeal with the AAO, which is much longer</p> <p>19 and much less likely to be successful.</p> <p>20 Q How would you -- what do you -- what --</p> <p>21 give me an example of contesting a breach.</p> <p>22 A In fact, I'm making a production of a</p>

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<p>101</p> <p>1 request to Ira Sussman. We made a request for 47</p> <p>2 different bonds that we felt we could contest</p> <p>3 because there were issues. And so Julie --</p> <p>4 Q You're making that different than an</p> <p>5 appeal?</p> <p>6 A You're --</p> <p>7 Q No, I'm just trying to understand.</p> <p>8 A No, yeah, it is different.</p> <p>9 Q I'm trying to understand what your</p> <p>10 difference -- your distinction is.</p> <p>11 A Yes. See, here's how it works: You</p> <p>12 know, a notice to deliver a bond, you know,</p> <p>13 there's a notice to deliver, the person didn't get</p> <p>14 the notice. The bond breaches. Maybe we don't</p> <p>15 even have the breach yet, right?</p> <p>16 But we know the bond breached. We know</p> <p>17 there's an issue. Maybe the person got</p> <p>18 transferred from one jail to the other and the</p> <p>19 judge -- this happens, it happens in Texas,</p> <p>20 there's an error, the person got sent home and</p> <p>21 didn't -- wasn't able to go to the court that they</p> <p>22 were supposed to so they went to the wrong court.</p>	<p>103</p> <p>1 Q Let's see the letter.</p> <p>2 A I may have to pull it up</p> <p>3 electronically.</p> <p>4 MR. SHOREMAN: Do whatever you have to</p> <p>5 do.</p> <p>6 THE WITNESS: Okay.</p> <p>7 Q All right. Let's -- Mr. Donovan, are</p> <p>8 you looking for the letter; is that what you're</p> <p>9 doing?</p> <p>10 A December 19th, 2017. And I will -- it</p> <p>11 was a letter that Juliana Gutierrez sent to</p> <p>12 Mr. Sussman, that I will --</p> <p>13 MR. SHOREMAN: Can you email it to me</p> <p>14 and I'll provide it.</p> <p>15 MS. KATSANTONIS: We might have that.</p> <p>16 A You probably do.</p> <p>17 Q But we'll come back to it. I think</p> <p>18 it's in one of those boxes.</p> <p>19 THE WITNESS: Anyway, John, I'm sending</p> <p>20 it over to you just to have it.</p> <p>21 MR. SHOREMAN: Thank you.</p> <p>22 THE WITNESS: Otherwise I'll forget.</p>
<p>102</p> <p>1 That kind of stuff happens.</p> <p>2 And in those situations, when you can</p> <p>3 prove it, you can put that in front of the bond</p> <p>4 unit officer and they cancel the breach. But in</p> <p>5 order to do that, I have to have a letter from the</p> <p>6 surety, because the bond unit officer doesn't care</p> <p>7 about the co-obligator, they want the surety to</p> <p>8 give us permission to contest. And we asked for</p> <p>9 permission to contest from RLI, and RLI said --</p> <p>10 first of all, you refused it entirely. And then</p> <p>11 when we sent this letter and said, look, this is a</p> <p>12 lot of money. Our breach rate with RLI is higher.</p> <p>13 We're concerned about it. We want to be able to</p> <p>14 contest these breaches and --</p> <p>15 Q Did you say that --</p> <p>16 A -- Mr. Sussman said no every single</p> <p>17 time. He never let us contest one.</p> <p>18 Q What's the date of that letter?</p> <p>19 A I will have to get it for you. But I</p> <p>20 can produce it.</p> <p>21 MR. SHOREMAN: Pull it out. You want</p> <p>22 to get it? Get it.</p>	<p>104</p> <p>1 I'll never remember to do it.</p> <p>2 Q All right. So getting back to this</p> <p>3 breach rate. So you're -- in order to determine</p> <p>4 the breach rate, you're -- when you use the total</p> <p>5 amount of bonds issued for a balance calculation,</p> <p>6 you're just assuming that they're not breached?</p> <p>7 They'll never be breached, right?</p> <p>8 A No, they're not breached.</p> <p>9 Q Well, aren't you -- don't you have to</p> <p>10 take into consideration the fact that some of them</p> <p>11 will be breached?</p> <p>12 A Well --</p> <p>13 Q In the future?</p> <p>14 A You know, I think that's why you</p> <p>15 calculate a fail rate so you understand what that</p> <p>16 fail rate likely is. I mean, I want to understand</p> <p>17 what my fail rate is.</p> <p>18 Q But --</p> <p>19 A So I understand what my fail rate is</p> <p>20 likely to be. Is that what you're asking me?</p> <p>21 Q Yeah, but that doesn't make any sense.</p> <p>22 So when you're calculating your fail rate -- I'm</p>

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<p>1 just trying to understand the math.</p> <p>2 <b>A Right.</b></p> <p>3 Q When you're calculating the rate,</p> <p>4 you're using as the denominator all of the</p> <p>5 outstanding, the penal sum of all of the</p> <p>6 outstanding bonds, right?</p> <p>7 <b>A Of course. I mean that's how you</b></p> <p>8 <b>determine a fail rate.</b></p> <p>9 Q Well, that's how you're calculating it.</p> <p>10 But you know that some of those bonds are going to</p> <p>11 be breached and paid?</p> <p>12 <b>A And I know the vast majority will never</b></p> <p>13 <b>be breached.</b></p> <p>14 Q How do you know that when you don't --</p> <p>15 you don't know the disposition of those -- you</p> <p>16 don't know the disposition of those bonds yet.</p> <p>17 <b>A Well, no, of course not. But</b></p> <p>18 <b>historical data. I mean, not everybody -- if</b></p> <p>19 <b>everyone breached you would never have gotten into</b></p> <p>20 <b>this program, right? I mean, you guys know that</b></p> <p>21 <b>every bond doesn't breach. And you guys know</b></p> <p>22 <b>that --</b></p>	<p>105</p> <p>1 So my question to you is RLI when</p> <p>2 issuing its bonds relied on the fact that Nexus</p> <p>3 said that it had a fail rate of under 2 percent,</p> <p>4 right?</p> <p>5 MR. SHOREMAN: Objection. Objection.</p> <p>6 That's -- you're asking this man to speculate as</p> <p>7 to what RLI believed.</p> <p>8 MS. KATSANTONIS: No, I'm asking him as</p> <p>9 to his understanding of the representation made by</p> <p>10 Nexus to RLI.</p> <p>11 MR. SHOREMAN: No, you're not. That's</p> <p>12 not the question.</p> <p>13 Q Didn't Nexus advise --</p> <p>14 MR. SHOREMAN: That's not the question.</p> <p>15 <b>Q Didn't Nexus advise RLI that it had a</b></p> <p>16 <b>bond failure rate of less than 2 percent?</b></p> <p>17 <b>A I think that's a legitimate question.</b></p> <p>18 <b>And the answer to that legitimate question is yes.</b></p> <p>19 <b>But for you to say I don't know what Mr. Sandoz or</b></p> <p>20 <b>Mr. Sussman or anybody else relied on more than</b></p> <p>21 <b>anything else and so I can't answer that. But I</b></p> <p>22 <b>certainly can tell you that yes we communicated</b></p>
<p>106</p> <p>1 Q Mr. Donovan?</p> <p>2 <b>A -- the vast majority of bonds don't</b></p> <p>3 <b>breach.</b></p> <p>4 <b>Q Mr. Donovan, what is the national --</b></p> <p>5 <b>right. RLI was relying on your representation of</b></p> <p>6 <b>an under-2 percent bond breach failure rate,</b></p> <p>7 <b>right, when it issued the bonds?</b></p> <p>8 <b>MR. SHOREMAN: Objection. That assumes</b></p> <p>9 <b>a fact not in evidence.</b></p> <p>10 <b>A I think RLI responded to our fail rate</b></p> <p>11 <b>which is favorable and as a company is good. With</b></p> <p>12 <b>the RLI business it's not because RLI has acted in</b></p> <p>13 <b>bad faith. RLI has refused to allow us to contest</b></p> <p>14 <b>bond breaches. RLI has continued to act in a way</b></p> <p>15 <b>that has only exacerbated the breach --</b></p> <p>16 Q That's not my question.</p> <p>17 <b>A We continued to pay them of course</b></p> <p>18 <b>because we do that.</b></p> <p>19 Q Mr. Donovan, you don't need to give me</p> <p>20 a whole recitation of your position with every</p> <p>21 question. I'm trying to ask simple questions so</p> <p>22 we can just keep moving it along.</p>	<p>107</p> <p>1 <b>our fail rate to them.</b></p> <p>2 Q When you're doing you --</p> <p>3 <b>A And it's unfortunate that the fail rate</b></p> <p>4 <b>for RLI is so high.</b></p> <p>5 Q Right. But just from a mathematical</p> <p>6 concept, when you're doing your fail rate the</p> <p>7 denominator is the full value of all the bonds</p> <p>8 that have ever been issued, right?</p> <p>9 <b>A That's correct.</b></p> <p>10 Q And you're using that large denominator</p> <p>11 to come up with your 2 percent figure based on how</p> <p>12 many bonds have been paid?</p> <p>13 <b>A Well, math is math, Vivian.</b></p> <p>14 Q Right?</p> <p>15 <b>A A percentage of something is a</b></p> <p>16 <b>percentage of something. I don't understand this</b></p> <p>17 <b>question. I'm not going to redefine math.</b></p> <p>18 Q Let me ask you this though, the</p> <p>19 denominator includes bonds that you know that</p> <p>20 you'll have to pay. In that denominator number</p> <p>21 there are bonds that will be breached and invoices</p> <p>22 paid, right?</p> <p>108</p>

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<p>109</p> <p>1 A Well, sure. That's why you calculate a</p> <p>2 fail rate, right, so you can anticipate what your</p> <p>3 fail rate is going to be. Isn't that why you want</p> <p>4 to know?</p> <p>5 Q Well, that's not an accurate fail rate,</p> <p>6 is it?</p> <p>7 A You want to know because you want to</p> <p>8 put it in your motion for summary judgment that we</p> <p>9 have a high fail. But the only place we have a</p> <p>10 high fail rate is RLI bonds because your client</p> <p>11 doesn't allow us to contest, your client stands</p> <p>12 in the way of our ability to adjudicate these</p> <p>13 favorably and we have to pay more.</p> <p>14 Q Doesn't --</p> <p>15 A But that's what we're talking about.</p> <p>16 Q What's your fail rate for all your</p> <p>17 other sureties?</p> <p>18 A It's -- as I said, the fail rate is</p> <p>19 2.38 percent.</p> <p>20 Q So that applies for each and every</p> <p>21 other surety?</p> <p>22 A That's everybody.</p>	<p>111</p> <p>1 say that would be that RLI's breach rate is much,</p> <p>2 much higher than our global breach rate. That's</p> <p>3 probably a better way to say it.</p> <p>4 Q Again, looking at your -- how you</p> <p>5 calculate a failure rate, wouldn't you agree that</p> <p>6 that's erroneous because some of the bonds that</p> <p>7 you include in the denominator will be breached?</p> <p>8 MR. SHOREMAN: Objection. That's not</p> <p>9 an appropriate question to a corporate</p> <p>10 representative.</p> <p>11 A I know.</p> <p>12 MR. SHOREMAN: Are you asking for his</p> <p>13 personnel opinion?</p> <p>14 MS. KATSANTONIS: I'm asking -- he's</p> <p>15 giving me what Nexus' failure rate is.</p> <p>16 MR. SHOREMAN: Yeah. You're telling</p> <p>17 him -- he's given you his corporate policy and</p> <p>18 you're saying isn't that corporate policy wrong.</p> <p>19 He's not responsible for defending that corporate</p> <p>20 policy; he's responsible for telling you what it</p> <p>21 is.</p> <p>22 MS. KATSANTONIS: That's fine. He can</p>
<p>110</p> <p>1 Q No, but I'm asking you, what is your</p> <p>2 fail rate for other sureties? Let's say FCS?</p> <p>3 A I don't know. We don't keep that -- we</p> <p>4 don't keep that data specific to each surety. The</p> <p>5 only reason we have it for FSC is because you</p> <p>6 provided it -- RLI is because you provided it.</p> <p>7 Q Right. So when you say RLI's fail rate</p> <p>8 is higher than the other sureties, you don't know</p> <p>9 if that's true?</p> <p>10 A You know what, Ms. Katsantonis, you're</p> <p>11 exactly right. I will be able to say with</p> <p>12 absolute assurance that RLI's fail rate is higher,</p> <p>13 much, much, much higher, more than three times as</p> <p>14 high as our global fail rate. But you're quite</p> <p>15 right. I can't say that RLI has a higher fail</p> <p>16 rates than the others because I don't have those</p> <p>17 calculations. I can say that it is obviously if</p> <p>18 RLI's calculation is, you know, three times as</p> <p>19 much that the other sureties would be much lower.</p> <p>20 And it's obviously based on the calculations in</p> <p>21 total that it's much lower. But I think you're</p> <p>22 right, what I can say and the appropriate way to</p>	<p>112</p> <p>1 explain to me --</p> <p>2 MR. SHOREMAN: Go ahead.</p> <p>3 MS. KATSANTONIS: If you're going to</p> <p>4 instruct him not to answer how he calculates.</p> <p>5 MR. SHOREMAN: No. But I want --</p> <p>6 you're asking him a question that can only go to</p> <p>7 this witness's personal knowledge.</p> <p>8 MS. KATSANTONIS: No. It's his --</p> <p>9 Nexus' calculation -- and it doesn't matter, I</p> <p>10 don't care if it's personal or not. He's the</p> <p>11 president of the company. It doesn't matter. It</p> <p>12 binds the company to the same degree.</p> <p>13 MR. SHOREMAN: No, that's not -- that's</p> <p>14 incorrect, Ms. Katsantonis.</p> <p>15 MS. KATSANTONIS: I'm not going to</p> <p>16 argue with you.</p> <p>17 MR. SHOREMAN: The issue here is what</p> <p>18 is the policy of the company not to ask the</p> <p>19 corporate representative isn't that policy that</p> <p>20 you just enunciated therefore wrong.</p> <p>21 MR. HARRIS: Let's off the record to</p> <p>22 have this discussion.</p>

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<p>113</p> <p>1 BY MS. KATSANTONIS:</p> <p>2 Q Right. So in calculating the bond</p> <p>3 breach ratio, isn't it true that the denominator</p> <p>4 figure is inaccurate because some of those bonds</p> <p>5 will be breached and invoiced? They'll be moved</p> <p>6 to the numerator at some point, right?</p> <p>7 MR. SHOREMAN: Okay. I object.</p> <p>8 Go ahead and answer.</p> <p>9 A Okay. So I don't really understand</p> <p>10 your question and I'll say that I don't understand</p> <p>11 it not because I need you to repeat it, but</p> <p>12 because I think we're completely talking about two</p> <p>13 different things.</p> <p>14 When I calculate a fail rate, I'm using</p> <p>15 real numbers. I'm using them in a very</p> <p>16 straightforward way and I'm calculating it the way</p> <p>17 everybody else calculates those numbers. When you</p> <p>18 have -- when you have two numbers and you're</p> <p>19 trying to determine the percentage of one number</p> <p>20 versus the other. There's a very basic</p> <p>21 straightforward mathematical calculation, we all</p> <p>22 learned it in fourth grade, that enables you to</p>	<p>115</p> <p>1 A But you want your answer to a question</p> <p>2 which is wrong. I mean if you want to testify you</p> <p>3 can give whatever answer you want.</p> <p>4 Q Is it wrong that after three months</p> <p>5 your failure rate with RLI would have been zero</p> <p>6 percent?</p> <p>7 A I'm not testifying about my failure</p> <p>8 rate with RLI after three months. I'm testifying</p> <p>9 based on a year of business, where it's --</p> <p>10 Q Well, it could be --</p> <p>11 A -- seven percent, where it's three</p> <p>12 times the other books of business.</p> <p>13 Q Right, but based on your calculations,</p> <p>14 based on if you take the total number of bonds</p> <p>15 paid versus all the bonds out there, from three</p> <p>16 months into the program, RLI's bond breach failure</p> <p>17 rate would have been zero percent, correct?</p> <p>18 A Well, sure.</p> <p>19 Q Okay.</p> <p>20 A But since you have six years' worth of</p> <p>21 numbers, aren't you kind of proving my point?</p> <p>22 Q And --</p>
<p>114</p> <p>1 get that figure. That's what I've done. You are</p> <p>2 asserting that there's got to be some other</p> <p>3 additional calculation. No, no. There is a total</p> <p>4 universe of bonds and there is a breach rate of</p> <p>5 those bonds. You would have to consider those two</p> <p>6 numbers together to get that in any -- any other</p> <p>7 way that you would calculate it would be</p> <p>8 erroneous.</p> <p>9 Q Really? Because if you issued all the</p> <p>10 bonds on the same day, let's just say you</p> <p>11 calculated RLI's failure rate, if you calculated</p> <p>12 RLI's based on the way you're calculating it, if</p> <p>13 you calculated RLI's failure rate within the first</p> <p>14 three months of issuing a bond, it would be zero</p> <p>15 percent, right?</p> <p>16 A But that's not what we're doing.</p> <p>17 Q But isn't that true?</p> <p>18 A Hold on a second?</p> <p>19 Q Isn't it true? Based on your</p> <p>20 calculations isn't that true?</p> <p>21 A Can you stop interrupting?</p> <p>22 Q I want the answer to the question.</p>	<p>116</p> <p>1 A Aren't you basically justifying further</p> <p>2 my argument that these numbers matter more because</p> <p>3 there's more of them? Thank you, Ms. Katsantonis.</p> <p>4 Q And if you have six years of numbers on</p> <p>5 the disposition of those bonds, how many have been</p> <p>6 canceled versus paid, isn't that accurate data to</p> <p>7 use?</p> <p>8 A No. The cancellation has nothing to do</p> <p>9 with the breach rate.</p> <p>10 Q It has to do with the rate at which the</p> <p>11 liability of a surety is terminated, right?</p> <p>12 A Yeah. So the -- any potential future</p> <p>13 liability would not be there if the bond is</p> <p>14 canceled. But that's not -- we're talking about a</p> <p>15 fail rate, Ms. Katsantonis. We're talking about a</p> <p>16 fail rate based on breaches. You are making this</p> <p>17 very, very simple issue much more complicated. At</p> <p>18 the end of the day, you filed a lawsuit against me</p> <p>19 because you want money. You want money based on</p> <p>20 what you think are potential losses, not real</p> <p>21 losses because you had no losses. So this is a</p> <p>22 lawsuit about money. And now I'm talking to</p>

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<p>117</p> <p>1 you --</p> <p>2 Q I know you keep saying that for the</p> <p>3 record, but I hope you understand what exoneration</p> <p>4 is.</p> <p>5 A Ms. Katsantonis, I'm trying to answer.</p> <p>6 MR. SHOREMAN: Please don't interrupt</p> <p>7 the witness.</p> <p>8 A I'm trying to answer.</p> <p>9 MS. KATSANTONIS: He's not answering.</p> <p>10 He just keeps giving his own lecture.</p> <p>11 MR. SHOREMAN: Are you just going to</p> <p>12 cut off his answer then?</p> <p>13 Q Go ahead.</p> <p>14 A This is based on money. It's based on</p> <p>15 money paid.</p> <p>16 Q Then you don't understand the whole</p> <p>17 lawsuit.</p> <p>18 MR. SHOREMAN: Please. You're arguing.</p> <p>19 A I read the Complaint. And I'd really</p> <p>20 like to finish my answer, please.</p> <p>21 Q I don't --</p> <p>22 A You're not interested, but guess what,</p>	<p>119</p> <p>1 MS. KATSANTONIS: I don't want to waste</p> <p>2 any more time on the record. Let's get off the</p> <p>3 record.</p> <p>4 MR. SHOREMAN: No, we're not going off</p> <p>5 the record.</p> <p>6 MS. KATSANTONIS: All right. Well,</p> <p>7 then I don't want this time on my record.</p> <p>8 MR. SHOREMAN: Then don't ask him</p> <p>9 open-ended questions.</p> <p>10 Go ahead. Finish your question --</p> <p>11 finish your answer.</p> <p>12 A This is a lawsuit about money. So when</p> <p>13 you're asking questions about breach rate and fail</p> <p>14 rate, why wouldn't I presume you want to know</p> <p>15 about the money. So the only way to calculate the</p> <p>16 breach rate is to take the total dollars of the</p> <p>17 liability and the total dollars of what has been</p> <p>18 paid and that's your rate and the rate is</p> <p>19 2.38 percent and the fact that it's three times</p> <p>20 that for RLI is a symptom of the bad faith.</p> <p>21 Q Do you know what bad faith is?</p> <p>22 A Oh, yes. I've gotten the crash course</p>
<p>118</p> <p>1 the record is. I'm going to finish my answer for</p> <p>2 the record.</p> <p>3 Q You can answer --</p> <p>4 A Ms. Katsantonis, please.</p> <p>5 Q I'm going to let you finish this answer</p> <p>6 but in the future I'm going to try to direct you</p> <p>7 to please just answer my questions. You're going</p> <p>8 to have your day in court and you can go --</p> <p>9 A Yes, I am.</p> <p>10 Q -- and talk about everything you would</p> <p>11 like to talk about in your position and that's</p> <p>12 great. But today we're here for me to get answers</p> <p>13 with regard to our deposition.</p> <p>14 A But you ask a question.</p> <p>15 MR. SHOREMAN: Object. Surely,</p> <p>16 Ms. Katsantonis, you must agree that you want this</p> <p>17 witness to give full and complete responses,</p> <p>18 correct?</p> <p>19 MS. KATSANTONIS: Let's finish. I</p> <p>20 would like him to --</p> <p>21 MR. HARRIS: More responsive answers.</p> <p>22 MR. SHOREMAN: Let's get it.</p>	<p>120</p> <p>1 of it in the last couple years.</p> <p>2 Q Okay. And what's your definition of</p> <p>3 bad faith?</p> <p>4 A When RLI engages in an agreement and</p> <p>5 then does things that cause higher failure rates,</p> <p>6 for example, that's bad faith. So for example,</p> <p>7 when RLI arbitrarily and capriciously denies our</p> <p>8 ability to contest breaches, you know, knowing</p> <p>9 that that's going to elevate the breach rate,</p> <p>10 that's bad faith.</p> <p>11 Q What facts and --</p> <p>12 A When RLI doesn't send us cancellations</p> <p>13 for two years, that's bad faith. When RLI sends</p> <p>14 us a bill and makes us pay an invoice they know is</p> <p>15 canceled, that's bad faith. These are elements of</p> <p>16 bad faith. And I'm going to need a bio break.</p> <p>17 MR. SHOREMAN: Okay. Is this lunch or</p> <p>18 is this a break?</p> <p>19 THE VIDEOGRAPHER: We are going off the</p> <p>20 record at 13:21.</p> <p>21 (Recess taken.)</p> <p>22 THE VIDEOGRAPHER: We are back on the</p>

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Micheal Paul Donovan, Corporate Designee

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<p>1 record at 14:14.</p> <p>2 BY MS. KATSANTONIS:</p> <p>3 Q Mr. Donovan, before we took a break,</p> <p>4 you were listing a series of issues that you</p> <p>5 decided -- where you determined to be bad faith?</p> <p>6 A Yes. My answer, yes, ma'am.</p> <p>7 Q So just to be clear, what was the first</p> <p>8 one, arbitrarily and capriciously?</p> <p>9 A Well, to ask me to remember the order</p> <p>10 which I listed them I may fail.</p> <p>11 Q I'm sorry.</p> <p>12 A But what I said was arbitrarily and</p> <p>13 capriciously deny our ability to contest bond</p> <p>14 breaches we know are inaccurate. Which I think</p> <p>15 shows in the fail rate very clearly.</p> <p>16 We're paying bonds that we wouldn't</p> <p>17 have to pay, that we shouldn't have to pay. We</p> <p>18 have RLI bonded principals who are still going to</p> <p>19 court on breaches we've paid.</p> <p>20 Q Okay.</p> <p>21 A Because they were reopened, but we</p> <p>22 couldn't contest it so we couldn't get the breach</p>	<p>121</p> <p>1 A So what you're asking is if -- can you</p> <p>2 help me understand what your question is?</p> <p>3 Are you saying a person who doesn't --</p> <p>4 who breaches and whose bond is paid still has</p> <p>5 responsibilities? Is that what you're asking me?</p> <p>6 Q Right?</p> <p>7 A I just want to understand.</p> <p>8 Q Right.</p> <p>9 A Yes.</p> <p>10 Q A person doesn't appear, then there's a</p> <p>11 notice to deliver to the bonding company. And the</p> <p>12 immigrant doesn't show up, eventually the bonding</p> <p>13 company pays the penalty, penal sum of the bond.</p> <p>14 But isn't -- aren't those proceedings ongoing</p> <p>15 still?</p> <p>16 A So --</p> <p>17 Q Doesn't DHS continue?</p> <p>18 A Typically a warrant would be issued for</p> <p>19 the person's arrest at which time they would be</p> <p>20 brought back into custody and then a new case</p> <p>21 would be initiated against them.</p> <p>22 Q So they could still have proceedings?</p>
<p>122</p> <p>1 set aside so we had to pay it.</p> <p>2 Q Which bonds principals do you have</p> <p>3 still going to court?</p> <p>4 A I'll get you a list of the bond</p> <p>5 principals that we have. I think there are four</p> <p>6 or five of them.</p> <p>7 Q You don't know sitting here today?</p> <p>8 A There's a gentleman named [REDACTED]</p> <p>9 [REDACTED] I'll have to get you his full</p> <p>10 name, but I've been looking at his case</p> <p>11 specifically and talking to him. He has a breach.</p> <p>12 That breach invoiced and he still has immigration</p> <p>13 court. There was an error in his case, this</p> <p>14 sometimes happens, and I think that had we had an</p> <p>15 opportunity to contest his breach we would have</p> <p>16 done that. If it were a non-RLI breach, we would</p> <p>17 have contested it with the bond officer and</p> <p>18 hopefully had it mitigated.</p> <p>19 Q Isn't -- in any situation, even if a</p> <p>20 bond penal sum is paid, can't the DHS continue in</p> <p>21 its efforts to identify the immigrant and continue</p> <p>22 with removal proceedings or any other proceedings?</p>	<p>123</p> <p>1 A They could still have proceedings. And</p> <p>2 what they would no longer have, though, is an</p> <p>3 active bond. So if they're at liberty in the</p> <p>4 proceedings and then the bond is abridged, then</p> <p>5 they're no longer on bond and that's what can</p> <p>6 affect them. It makes them susceptible to</p> <p>7 immediate arrest.</p> <p>8 Q Okay. So if a bond breach invoice is</p> <p>9 mitigated, the result is just that the amount of</p> <p>10 the payment obligation is reduced, right?</p> <p>11 A Correct.</p> <p>12 Q So -- right. So it has no impact on</p> <p>13 the individual's substantive rights in immigration</p> <p>14 court, right?</p> <p>15 A It depends. If it's mitigated, meaning</p> <p>16 you get a 33 or 66 percent reduction, then, no,</p> <p>17 there's nothing to do with the individual's case</p> <p>18 and everything to do with the obligor, co-obligor</p> <p>19 showing that they substantially complied, meaning</p> <p>20 that the immigrant substantially complied with</p> <p>21 their duties.</p> <p>22 Now, that being said, if it's a -- but</p> <p>124</p>

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<p>125</p> <p>1 if it's a situation where the breach was improper</p> <p>2 and they're rescinding the breach, then it</p> <p>3 absolutely affects the client. And the vast</p> <p>4 majority of cases where we challenge a breach</p> <p>5 because, you know, with a surety letter, with an</p> <p>6 authorization letter from a surety, it isn't to</p> <p>7 get a mitigation, it isn't to get 33 percent or</p> <p>8 66 percent, it's because the person actually has</p> <p>9 an active case, there's a real issue and the bond</p> <p>10 was breached inappropriately and we're asking the</p> <p>11 bond unit officer to fix it. It's the most direct</p> <p>12 way to seek a resolution as we explained to</p> <p>13 Mr. Sussman when we asked permission to do it.</p> <p>14 He denied our blanket permission but</p> <p>15 then told us we could ask for permission for</p> <p>16 individual bonds. We asked for permission for</p> <p>17 dozens, were denied each and every time. So we've</p> <p>18 not been able to actually contest breaches that</p> <p>19 are RLI breaches.</p> <p>20 Q So what argument would you make for</p> <p>21 Hector that would affect his substantive rights in</p> <p>22 immigration court?</p>	<p>127</p> <p>1 Q No. What do you mean it's not</p> <p>2 resolved? You keep -- I mean, you're kind of</p> <p>3 mixing terms. I'm just trying to understand.</p> <p>4 A Let me be very clear.</p> <p>5 Q If a bond is paid, how does that bond</p> <p>6 payment affect the rights of the immigrant to</p> <p>7 pursue its rights in immigration court?</p> <p>8 A We are talking about a very specific</p> <p>9 subset of bonds. What we're talking about are</p> <p>10 reconsideration requests. That's what we're</p> <p>11 talking about. So you're asking a question on top</p> <p>12 of that conversation. So let's get apples to</p> <p>13 apples, okay? We're talking about --</p> <p>14 Q Reconsideration of what decision?</p> <p>15 A Of the breach?</p> <p>16 Q Of the bond breach or the notice to</p> <p>17 appear?</p> <p>18 A Of the bond breach. Which is what we</p> <p>19 require surety authorization to submit, okay? So</p> <p>20 what we're talking about, which doesn't happen in</p> <p>21 the universe of RLI bonds because your client</p> <p>22 doesn't permit it. But what would typically</p>
<p>126</p> <p>1 MR. WILLIAMS: When you say substantive</p> <p>2 rights, are you talking about status?</p> <p>3 MS. KATSANTONIS: I'm asking him based</p> <p>4 on what Mr. Donovan's testimony is.</p> <p>5 A So I can recognize a legal issue but</p> <p>6 I'm not a lawyer. So I can't advise [REDACTED] of his</p> <p>7 rights and I can't advise you of [REDACTED] rights.</p> <p>8 Q Well, but you just said that somehow,</p> <p>9 or I think you're implying that those rights are</p> <p>10 somehow affected if a bond is paid?</p> <p>11 A They can be.</p> <p>12 Q How specifically?</p> <p>13 MR. WILLIAMS: Status rights or what</p> <p>14 are you --</p> <p>15 MS. KATSANTONIS: This is his testimony</p> <p>16 I'm asking him. I don't understand it either but</p> <p>17 I'm trying to figure out how are the immigrants'</p> <p>18 rights affected if a bond is paid.</p> <p>19 A Because if a bond is -- if a bond is</p> <p>20 breached and it's paid and it's not resolved, then</p> <p>21 there's a warrant issued for that alien's arrest.</p> <p>22 Do you understand?</p>	<p>128</p> <p>1 happen.</p> <p>2 Q That's -- okay?</p> <p>3 A That's true. What typically happens in</p> <p>4 a case like that is an individual will be</p> <p>5 breached. I'll give you an example, by way of</p> <p>6 example, individuals of [REDACTED] the</p> <p>7 judge calls the person up, sets a bond, holds them</p> <p>8 over for a two-week detained calendar docket. In</p> <p>9 the middle of those two weeks, they post bond,</p> <p>10 they go home. They travel to New York where they</p> <p>11 live. In two weeks the judge calls their case,</p> <p>12 they're not there. What sometimes happens, and</p> <p>13 it's a tragedy of justice for sure but it's</p> <p>14 happened in hundreds of cases, is the judge will</p> <p>15 order them removed because they're not there. And</p> <p>16 that immediately triggers an I-340, immediately,</p> <p>17 almost, because the bond had just recently been</p> <p>18 posted. And in those situations when you can show</p> <p>19 that the person couldn't have gone to court, you</p> <p>20 can go to the bond unit officer, who wants to do</p> <p>21 the right thing.</p> <p>22 Q Okay.</p>

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<p>129</p> <p>1     <b>A</b>   And will rescind the bond breach. But</p> <p>2 if you can't go to that bond unit officer and make</p> <p>3 such a request then your only option is to appeal</p> <p>4 it to the AAO. And at that point in time this</p> <p>5 person's out here, if you pay the bond in the</p> <p>6 interim then a warrant can be issued for that</p> <p>7 person's arrest. That person can be brought back</p> <p>8 into custody. They can be held without bond. And</p> <p>9 certainly their lives are impacted by such</p> <p>10 decisions.</p> <p>11     <b>Q</b>   Is a bond breach notice in itself</p> <p>12 acting like a warrant?</p> <p>13     <b>A</b>   <b>No. No.</b></p> <p>14     <b>Q</b>   Does the bond breach notice trigger a</p> <p>15 warrant?</p> <p>16     <b>A</b>   Not necessarily. A notice -- so we're</p> <p>17 going to apples to apples. From a notice to</p> <p>18 deliver is more like a warrant for a bail agent,</p> <p>19 right? Like a co-obligor can use that. You're</p> <p>20 quite right. A co-obligor can use an I-340 to</p> <p>21 detain someone. A breach is a record of what</p> <p>22 happened on the bond, it isn't in and of itself a</p>	<p>131</p> <p>1     <b>Q</b>   Isn't the I-340 --</p> <p>2     <b>A</b>   <b>The subject of the bond is the</b></p> <p>3 <b>immigrant, right? So everything -- everything</b></p> <p>4 <b>that's required of the person under the bond is</b></p> <p>5 <b>required of the immigrant. The immigrant's</b></p> <p>6 <b>required to go to court. The immigrant's</b></p> <p>7 <b>required --</b></p> <p>8     <b>Q</b>   Let me just ask you it this way.</p> <p>9     <b>A</b>   <b>Maybe I'm misunderstanding you.</b></p> <p>10     <b>Q</b>   Yeah, let me just do it a simpler way.</p> <p>11 When you get a --</p> <p>12         (Donovan Exhibit 5 marked for</p> <p>13 identification and attached to the transcript.)</p> <p>14     <b>Q</b>   So this is a I-340 notice to obligor to</p> <p>15 deliver alien, right?</p> <p>16     <b>A</b>   <b>Correct. That's what it looks like.</b></p> <p>17     <b>Q</b>   So when we talk about notice to</p> <p>18 deliver, this is what we're talking about, right?</p> <p>19     <b>A</b>   <b>That's right. This is an I-340?</b></p> <p>20     <b>Q</b>   And it's going to the obligor, right,</p> <p>21 it's not going to the immigrant, it goes to the</p> <p>22 obligor and says this is a notice to the obligor</p>
<p>130</p> <p>1 warrant or anything like that.</p> <p>2     <b>Q</b>   Well, the breach is issued after -- the</p> <p>3 breach notice is the I323, right?</p> <p>4     <b>A</b>   <b>Right. It's after the I-340.</b></p> <p>5     <b>Q</b>   Right. So, first, you get the I-340,</p> <p>6 which is the notice to deliver, right?</p> <p>7     <b>A</b>   <b>It makes sense if they're in</b></p> <p>8 <b>subsequential order, wouldn't it, they're not.</b></p> <p>9     <b>Q</b>   Yeah. So when you get a notice of</p> <p>10 breach, the I323, what is breach?</p> <p>11     <b>A</b>   <b>The breach indicates that a condition</b></p> <p>12 <b>that the immigrant was supposed to keep wasn't</b></p> <p>13 <b>kept and that they're in breach of the bond</b></p> <p>14 <b>responsibility.</b></p> <p>15     <b>Q</b>   Well, it's not a breach of a condition</p> <p>16 of the immigrant, right? It's the breach of the</p> <p>17 notice to deliver? Isn't that what issues the</p> <p>18 I3 --</p> <p>19     <b>A</b>   <b>No, no, no. The immigrant is the</b></p> <p>20 <b>bonded principal.</b></p> <p>21     <b>Q</b>   Right, but the I323 is a --</p> <p>22     <b>A</b>   <b>I think maybe you're confused.</b></p>	<p>132</p> <p>1 to deliver the alien, right?</p> <p>2     <b>A</b>   <b>The notice is to the obligor, although</b></p> <p>3 <b>it does go to the alien as well.</b></p> <p>4     <b>Q</b>   Right?</p> <p>5     <b>A</b>   <b>The agent sends it to the alien and in</b></p> <p>6 <b>their bond management handbook they actually call</b></p> <p>7 <b>it a run letter.</b></p> <p>8     <b>Q</b>   Right. But the notice is to the surety</p> <p>9 saying under the terms of the delivery bond you</p> <p>10 posted, ICE is making a demand upon you to deliver</p> <p>11 the alien or have the alien appear at the location</p> <p>12 below, right?</p> <p>13     <b>A</b>   <b>Right. But the bond is about the alien</b></p> <p>14 <b>following their -- the requirements of going to</b></p> <p>15 <b>court and keeping appearances. I mean the alien</b></p> <p>16 <b>is the one whose behavior --</b></p> <p>17     <b>Q</b>   Right, but I'm going --</p> <p>18     <b>A</b>   <b>-- bond breaches or not.</b></p> <p>19     <b>Q</b>   Right. But once you get a notice to</p> <p>20 deliver --</p> <p>21     <b>A</b>   <b>Certainly once there's a notice to</b></p> <p>22 <b>deliver, the government communicates to the</b></p>

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<p>133</p> <p>1 obligors and says to the obligors, hey, cause</p> <p>2 this.</p> <p>3 Q Well, they're saying hey obligor, it's</p> <p>4 your obligation to deliver this alien in</p> <p>5 accordance to the terms of your bond, right?</p> <p>6 A Sure. It is an element of the bond.</p> <p>7 You can deliver the alien and depending on what</p> <p>8 happens in the case that you've just gave me, you</p> <p>9 see it says purpose interview, so this would not</p> <p>10 be a removal, so this person would walk out of</p> <p>11 this office.</p> <p>12 Q Okay. But I'm just -- okay?</p> <p>13 A I'm sorry, I'm going to answer. You</p> <p>14 walk up to this person's house, you go knock on</p> <p>15 their door, throw them in the handcuffs, throw</p> <p>16 them in the back of your van and take them to the</p> <p>17 ICE office. When this interview is over, they're</p> <p>18 walking home. And if you treated the immigrant</p> <p>19 that way, they're never going to come back to</p> <p>20 court. This is why the idea that the co-obligors</p> <p>21 are supposed to go out and round people up is</p> <p>22 foolish.</p>	<p>135</p> <p>1 Q My question is pretty simple. This was</p> <p>2 an I-340 notice and it's to the obligor to deliver</p> <p>3 the alien, correct?</p> <p>4 A It is a notice to the obligor, yes.</p> <p>5 Q And the obligor here is being sent to</p> <p>6 RLI Insurance Company, correct?</p> <p>7 A That's right.</p> <p>8 Q And it says under the terms of the</p> <p>9 delivery bond you posted, ICE is making a demand</p> <p>10 upon you to deliver the alien or have the alien</p> <p>11 appear, correct?</p> <p>12 A Right. Because the alien is the one</p> <p>13 who's scheduled to appear.</p> <p>14 Q Right?</p> <p>15 A Correct.</p> <p>16 Q And the deliver bond -- the notice to</p> <p>17 deliver is telling the obligor to cause the</p> <p>18 immigrant to appear as set forth in the bond,</p> <p>19 right?</p> <p>20 A Correct.</p> <p>21 Q Okay. And under warning, the bond --</p> <p>22 the notice provides that failure to deliver or</p>
<p>134</p> <p>1 Q Mr. Donovan, you're not answering my</p> <p>2 question. You keep going.</p> <p>3 A If your client did that, none of these</p> <p>4 people would appear.</p> <p>5 Q Okay. I just want you to answer --</p> <p>6 today's deposition is about us getting facts,</p> <p>7 okay, and getting your personal knowledge, okay?</p> <p>8 MR. SHOREMAN: It's not about getting</p> <p>9 his personal knowledge.</p> <p>10 MS. KATSANTONIS: Yes.</p> <p>11 MR. SHOREMAN: He's a corporate</p> <p>12 representative.</p> <p>13 MS. KATSANTONIS: Yes.</p> <p>14 Q So what I'd like to do is limit the</p> <p>15 answers to my questions and you will have an</p> <p>16 opportunity to explain the whole process and your</p> <p>17 thoughts on the whole process at the appropriate</p> <p>18 time. But today I'd like you to try to stick to</p> <p>19 my questions.</p> <p>20 A I believe I've answered your questions.</p> <p>21 Q Okay. So my question is --</p> <p>22 A And I'll continue to do so.</p>	<p>136</p> <p>1 have the alien appear in accordance with this</p> <p>2 demand may result in a declaration of breach of</p> <p>3 the bond, right?</p> <p>4 A That's correct.</p> <p>5 Q So the breach notice is a notice that</p> <p>6 the bond obligation to deliver the alien has been</p> <p>7 breached?</p> <p>8 A Right.</p> <p>9 Q And then the notice says failure to</p> <p>10 deliver may result in a breach -- a declaration of</p> <p>11 breach and a warrant for the arrest of the alien</p> <p>12 may be issued?</p> <p>13 MR. SHOREMAN: Objection. You're not</p> <p>14 reading the whole sentence.</p> <p>15 Q Well, I can read the whole sentence.</p> <p>16 MR. SHOREMAN: Appreciate it.</p> <p>17 Q Failure to deliver or have the client</p> <p>18 appear in accordance with this demand may result</p> <p>19 in a declaration of a breach of the bond, its</p> <p>20 forfeiture to the government and a warrant for the</p> <p>21 arrest of the alien may be issued, right?</p> <p>22 A Sure, that's true. Yeah.</p>

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<p>137</p> <p>1 Q So that even if the bond is forfeited</p> <p>2 there still may be a warrant for the arrest of the</p> <p>3 alien issued?</p> <p>4 A The key word is maybe. So in any of</p> <p>5 these instances where an immigrant has an issue</p> <p>6 that they're communicating to the ICE officer,</p> <p>7 they're not going to issue a warrant. They</p> <p>8 typically would issue the warrants after that.</p> <p>9 But they certainly could. At any point in time</p> <p>10 ICE could issue an arrest warrant for any</p> <p>11 immigrant.</p> <p>12 Q Right.</p> <p>13 A I mean, they could certainly do that.</p> <p>14 Q And they advise you -- they advise the</p> <p>15 obligor specifically in this notice that they --</p> <p>16 if the alien does not appear, that that may result</p> <p>17 in a warrant, right?</p> <p>18 A Sure.</p> <p>19 Q And --</p> <p>20 A Are we moving past this one?</p> <p>21 Q Yes.</p> <p>22 A Okay.</p>	<p>139</p> <p>1 Q And so it references the condition of</p> <p>2 the bond has been -- having been violated?</p> <p>3 A Right.</p> <p>4 Q Right. And it has been determined the</p> <p>5 bond has been breached, right?</p> <p>6 A Right. That's why they're making you</p> <p>7 pay it.</p> <p>8 Q Right. And they say -- and they</p> <p>9 reference the demand to deliver, correct?</p> <p>10 A They do make that reference, yes.</p> <p>11 Q Okay. And so when the bond breach</p> <p>12 notice is delivered from the Department of</p> <p>13 Homeland Security, it's the result of the</p> <p>14 obligor's failure to deliver pursuant to the terms</p> <p>15 of the bond, right?</p> <p>16 A Can you repeat that? I'm sorry, I just</p> <p>17 kind of got lost in your sentence there.</p> <p>18 Sounded --</p> <p>19 Q The bond breach notice is provided</p> <p>20 based on the failure of the obligor to comply with</p> <p>21 the terms of the bond and deliver the immigrant,</p> <p>22 right?</p>
<p>138</p> <p>1 Q Thank you.</p> <p>2 So with regard to a breach notice --</p> <p>3 (Donovan Exhibit 6 marked for</p> <p>4 identification and attached to the transcript.)</p> <p>5 Q All right. So looking at the second</p> <p>6 page of this document, there's an I323 form?</p> <p>7 THE VIDEOGRAPHER: Vivian, if you could</p> <p>8 once again take it off and put it back on.</p> <p>9 MS. KATSANTONIS: Yeah, sorry. It's</p> <p>10 not on, that's probably why.</p> <p>11 A I will point out that in the cover</p> <p>12 email on this Laura seems to disagree with your</p> <p>13 expert. Your expert seems to think it happens on</p> <p>14 delivery. I think on final claim.</p> <p>15 Q Well, what RLI does --</p> <p>16 A The universe is still not \$10 million.</p> <p>17 Q Thank you for that edification. So</p> <p>18 looking at the I323 form?</p> <p>19 A Yes, ma'am.</p> <p>20 Q This is notice of immigration bond</p> <p>21 breached?</p> <p>22 A Yes, ma'am.</p>	<p>140</p> <p>1 A In certain circumstances. As you can</p> <p>2 see on the bond breach, there are multiple</p> <p>3 circumstances under which a bond can be breached.</p> <p>4 But, yes, in this case and in the majority of</p> <p>5 cases the RLI breached bonds is because the demand</p> <p>6 was made and the individual didn't appear.</p> <p>7 Q And so looking back at the -- first of</p> <p>8 all, so the -- there's not a bond breach notice</p> <p>9 issued for failure to make a payment, right?</p> <p>10 A Failure to make what payment?</p> <p>11 Q Penal sum of the bond, right?</p> <p>12 A There's not a what issued?</p> <p>13 Q Bond breach notice.</p> <p>14 A No, because you're paying a bond. So</p> <p>15 how would you --</p> <p>16 Q Right.</p> <p>17 A We would breach a breach. So you're</p> <p>18 suggesting that you would be breached for not</p> <p>19 paying a breach.</p> <p>20 Q I was trying to understand. Well, let</p> <p>21 me just say this again.</p> <p>22 The obligation is to deliver the alien,</p>

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<p>141</p> <p>1 right?</p> <p>2 <b>A That is an obligation.</b></p> <p>3 Q Well --</p> <p>4 <b>A It is an obligation under the bond, it</b></p> <p>5 <b>is not the obligation, there are multiple</b></p> <p>6 <b>obligations that the immigrant has.</b></p> <p>7 Q Okay.</p> <p>8 <b>A And it's not the first one. The first</b></p> <p>9 <b>one is actually, you know, abiding by the</b></p> <p>10 <b>conditions that the judge of the ICE office has</b></p> <p>11 <b>set. The second might be going to hearings.</b></p> <p>12 <b>We're talking about an expansive list of</b></p> <p>13 <b>conditions.</b></p> <p>14 Q Right. But none of the conditions are</p> <p>15 you just pay a sum certain?</p> <p>16 <b>A Yeah, at the end of the day if a bond</b></p> <p>17 <b>breaches you pay a certain sum.</b></p> <p>18 Q After the bond breaches?</p> <p>19 <b>A Right.</b></p> <p>20 Q After the bond breaches.</p> <p>21 <b>A Of course. And thank you. Exactly,</b></p> <p>22 <b>after the bond breaches, after all appeals have</b></p>	<p>143</p> <p>1 <b>A No, there's --</b></p> <p>2 Q There's no --</p> <p>3 <b>A There are filing fees and things like</b></p> <p>4 <b>that. But that's not the breach. I mean, that's</b></p> <p>5 <b>not what the bond is.</b></p> <p>6 Q The bond is you have to satisfy</p> <p>7 conditions --</p> <p>8 <b>A The ultimate condition of the bond is</b></p> <p>9 <b>you have to pay if there's a breach and there's a</b></p> <p>10 <b>breach with a final determination made.</b></p> <p>11 <b>That's what the bond breach is. You</b></p> <p>12 <b>either this or that.</b></p> <p>13 Q Okay. Can you discharge a bond by</p> <p>14 paying it at any time?</p> <p>15 <b>A Can you discharge a bond by paying it</b></p> <p>16 <b>at any time. No, I don't think you can.</b></p> <p>17 Q Right. You have to wait for there to</p> <p>18 be some sort of breach of a condition.</p> <p>19 <b>A Otherwise there --</b></p> <p>20 Q Just let me finish my question. Right?</p> <p>21 You have to wait --</p> <p>22 The only time to pay is after the</p>
<p>142</p> <p>1 <b>been made and there's a final claim on the bond,</b></p> <p>2 <b>then it's a claim. Until then, it's not due.</b></p> <p>3 Q Okay. That's your -- okay. But I'm</p> <p>4 getting back -- there's no condition of the bond</p> <p>5 that you have to pay money instead of delivering</p> <p>6 an alien or any of the other conditions?</p> <p>7 <b>A It is literally the ultimate condition</b></p> <p>8 <b>of the bond. It's literally in the -- in English</b></p> <p>9 <b>on the contract. I don't understand --</b></p> <p>10 Q Let me get back --</p> <p>11 <b>A I don't understand this question.</b></p> <p>12 Q Let me get back to it. There's no bond</p> <p>13 breach I323 notice issued based on a failure to</p> <p>14 pay a sum certain, right?</p> <p>15 <b>A What sum?</b></p> <p>16 Q Exactly, right? The reason you get a</p> <p>17 bond breach notice is for your failure to comply</p> <p>18 with the terms of the bond?</p> <p>19 <b>A It's for the -- the immigrant didn't</b></p> <p>20 <b>comply with terms of their bond. What payment do</b></p> <p>21 <b>you think the immigrant has to make?</b></p> <p>22 Q Well, nobody -- I'm asking you.</p>	<p>144</p> <p>1 conditions set forth in the bond haven't been met</p> <p>2 and there's a bond breach and it's after that</p> <p>3 point in time that the penal sum will be required</p> <p>4 to be paid, right?</p> <p>5 <b>A It's the letter of our defense,</b></p> <p>6 <b>absolutely. It's a breach, it's a claim --</b></p> <p>7 Q Okay. And so there's no --</p> <p>8 MR. SHOREMAN: Let him --</p> <p>9 <b>A -- and then you pay on the claim after</b></p> <p>10 <b>all of the appeals have been exhausted.</b></p> <p>11 Q Right. So you can't -- I'm correct</p> <p>12 that you can't simply pay a bond at any point in</p> <p>13 time to release the obligation under a bond?</p> <p>14 <b>A Ms. Katsantonis.</b></p> <p>15 Q Is that correct?</p> <p>16 <b>A Ms. Katsantonis --</b></p> <p>17 MR. SHOREMAN: Objection.</p> <p>18 <b>A It's an either/or. You comply or you</b></p> <p>19 <b>pay. You comply or you pay.</b></p> <p>20 Q Well, no. You never have to pay if you</p> <p>21 comply, right?</p> <p>22 <b>A Right. That's why you comply or you</b></p>

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<p>145</p> <p>1 pay.</p> <p>2 Q Right. And you can't pay without the</p> <p>3 steps of compliance first having taken place,</p> <p>4 right?</p> <p>5 A Then you wouldn't want to, right? You</p> <p>6 want the person to be --</p> <p>7 Q You can't is my question.</p> <p>8 MR. SHOREMAN: Objection. The question</p> <p>9 is -- read that question back, please.</p> <p>10 (The requested text was read by the</p> <p>11 reporter as follows: " Right. And you can't pay</p> <p>12 without steps of compliance first having taken</p> <p>13 place, right?")</p> <p>14 MR. SHOREMAN: I don't understand the</p> <p>15 question. Is there a question pending?</p> <p>16 MS. KATSANTONIS: No, he already</p> <p>17 answered it.</p> <p>18 MR. SHOREMAN: Okay.</p> <p>19 Q And is it Nexus' goal to have the</p> <p>20 immigrants comply with the terms of the bond</p> <p>21 before having to pay?</p> <p>22 A Always. Because we want the immigrant</p>	<p>147</p> <p>1 described below?</p> <p>2 A That is what it says, yes, ma'am.</p> <p>3 Q Okay. And the bond form provides that</p> <p>4 the right to appeal would be within 30 days of the</p> <p>5 notice, correct?</p> <p>6 A That's right. And if you don't appeal</p> <p>7 then the claim is final.</p> <p>8 MR. SHOREMAN: Ms. Katsantonis, if</p> <p>9 you're finished with that line of questioning, my</p> <p>10 client did have an opportunity to review those</p> <p>11 invoices and he can answer those questions that</p> <p>12 you had prior to lunch.</p> <p>13 Q Sure.</p> <p>14 A Yeah, the total number of invoices that</p> <p>15 we've received or that we paid are 1,146.</p> <p>16 Q Okay. Now let's just -- let me just</p> <p>17 break that down.</p> <p>18 A But that's not notices, the I-340,</p> <p>19 those things that you also asked for, we don't</p> <p>20 track that so I don't have that, I would have to</p> <p>21 count those, which would take a little longer than</p> <p>22 the 30 minutes I had at lunch.</p>
<p>146</p> <p>1 to do well. We want them to come out of the</p> <p>2 shadows and be whole and the best way to do that</p> <p>3 is to comply with the conditions and be fully a</p> <p>4 part of the community.</p> <p>5 Q Right. And you also don't want to have</p> <p>6 to pay bond amounts or bond penalties, right?</p> <p>7 A Well, I mean obviously that is a</p> <p>8 factor. But the human factor is much more</p> <p>9 important to me.</p> <p>10 Q Sure. And looking again at the</p> <p>11 immigration bond breach form?</p> <p>12 A Yes, ma'am.</p> <p>13 Q After the --</p> <p>14 MR. SHOREMAN: Exhibit 6?</p> <p>15 THE WITNESS: Yes, sir.</p> <p>16 Q Let me see. After the boxes, doesn't</p> <p>17 the bond form provide any cash or U.S. bonds</p> <p>18 pledged as security for the above-referenced bond</p> <p>19 will be forfeited to the United States or in the</p> <p>20 case of the surety bond, the surety invoice for</p> <p>21 the full amount of the bond if the decision is not</p> <p>22 appealed in accordance with the procedures</p>	<p>148</p> <p>1 Q So you're not prepared to do that</p> <p>2 today?</p> <p>3 A No, because we don't keep those</p> <p>4 numbers.</p> <p>5 Q So, you said and I'm a little confused.</p> <p>6 Invoices received or paid. So I'm kind of</p> <p>7 confused by what that number means. Is this on</p> <p>8 all --</p> <p>9 A It's across the board.</p> <p>10 Q Okay. And so why do you say received</p> <p>11 or paid?</p> <p>12 A Perhaps I was being inartful. I meant</p> <p>13 this is the total number that we received. This</p> <p>14 is -- the record that I have that we've received,</p> <p>15 1,146 notices of invoice.</p> <p>16 Q Okay.</p> <p>17 A I apologize.</p> <p>18 Q Okay. Is that 1,146 invoices on 1,146</p> <p>19 different bonds?</p> <p>20 A Yes.</p> <p>21 Q Okay.</p> <p>22 MR. SHOREMAN: Was there a further</p>

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<p>1 question that you wished him to identity those 2 bonds?</p> <p>3 MS. KATSANTONIS: We will --</p> <p>4 Q And do you know how many of those 5 invoices are RLI's bond?</p> <p>6 <b>A Yes, it would be the 290.</b></p> <p>7 Q Well, the 290 is what you've paid. Are 8 there not outstanding invoices?</p> <p>9 <b>A I'm sorry. So that wouldn't include 10 the outstanding, yeah.</b></p> <p>11 Q Yeah, I just want to make sure.</p> <p>12 <b>A That's right.</b></p> <p>13 MR. SHOREMAN: So again 14 Ms. Katsantonis, I want to make sure that we -- to 15 avoid any issue of compliance with this 30(b)(6), 16 is it your question that you want him to identify 17 bonds to each of the 1,146 invoices he just 18 testified to?</p> <p>19 MS. KATSANTONIS: No, I don't need him 20 to identity all the bonds, the 1,146, but what I'm 21 trying to get an understanding of and I'm a little 22 confused by is --</p>	<p>149</p> <p>1 You've asked him, Ms. Katsantonis, for a number of 2 bonds that are outstanding?</p> <p>3 MS. KATSANTONIS: How many invoices 4 have been issued on all of the Nexus bonds?</p> <p>5 MR. HARRIS: You want me to rephrase it 6 for her since I would be doing that anyway?</p> <p>7 MR. SHOREMAN: Go ahead.</p> <p>8 MR. HARRIS: How many bonds have had 9 one or more invoices issued on them?</p> <p>10 MR. SHOREMAN: Got it.</p> <p>11 MR. HARRIS: Total and then just unique 12 to RLI.</p> <p>13 MR. SHOREMAN: That differs from what 14 you just said.</p> <p>15 <b>A It would because sometimes invoices get 16 canceled if there's an appeal.</b></p> <p>17 MR. HARRIS: And they all haven't been 18 paid either, right?</p> <p>19 <b>A The vast majority, I think. How many 20 invoices do we have that are outstanding that are 21 within that 120-day window. Not a lot.</b></p> <p>22 MR. SHOREMAN: And unique.</p>
<p>149</p> <p>1 Q Are those invoices received and paid 2 because since it did not include the outstanding 3 RLI invoices, it very well may not include the 4 outstanding invoices for other sureties?</p> <p>5 <b>A It would be outstanding invoices 6 received and paid.</b></p> <p>7 Q Received and paid, okay.</p> <p>8 So do you know how many outstanding 9 invoices -- how many invoices have been received 10 on bonds requested by Nexus in total, whether paid 11 or not?</p> <p>12 <b>A Can you give me a minute to try to find 13 out?</b></p> <p>14 Q Sure. I guess we can do that during a 15 break.</p> <p>16 <b>A I can.</b></p> <p>17 Q Okay.</p> <p>18 <b>A Which, by the way I'm going to need to 19 take one at 3:30. So if I can set expectations 20 that would be awesome. Thank you. Probably 21 another hour.</b></p> <p>22 MR. SHOREMAN: Let me write this down.</p>	<p>151</p> <p>1 <b>A But I understand --</b></p> <p>2 MR. SHOREMAN: Thank you.</p> <p>3 BY MS. KATSANTONIS:</p> <p>4 Q All right. So with regard to RLI 5 bonds, RLI contends that the aggregate amount -- 6 or do you know how many -- strike that.</p> <p>7 Sorry. Do you know how many RLI bonds 8 remain outstanding?</p> <p>9 <b>A I do have that. But I can't remember 10 and now I'm not going to remember where I found it 11 and I have it somewhere. Do you understand how 12 frustrating that is? That's the thing about 13 30(b)(6) because I'm like I know I saw that. 14 Where did I see it? I literally had that broken 15 up.</b></p> <p>16 <b>So approximately 25 million. My 17 understanding is that there are 385 bond 18 cancellations totaling 5 million.</b></p> <p>19 Q I'm sorry, can you say that again 20 slower.</p> <p>21 <b>A Yeah. There are 395 bond cancellations 22 in an amount of \$5,117,500. So presumably you</b></p>

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<p>153</p> <p>1 would -- you could subtract that amount from the</p> <p>2 30,227,950. Which is the total face value of the</p> <p>3 bonds and that would give us the total.</p> <p>4 Q So going through your numbers, you had</p> <p>5 290 bonds that have been paid, right?</p> <p>6 A Right.</p> <p>7 Q Do you recall that testimony earlier</p> <p>8 today?</p> <p>9 A Correct.</p> <p>10 Q And now you're saying 395 canceled.</p> <p>11 A Well, understand your client hasn't</p> <p>12 given us cancellation for the last two years, so</p> <p>13 that's a stab in the dark based on what you've</p> <p>14 produced in response to our interrogatories.</p> <p>15 Because you've produced numbers in response to our</p> <p>16 interrogatories of what bonds have been canceled</p> <p>17 that literally states that certain bonds are</p> <p>18 canceled but then you say you never received the</p> <p>19 cancellation. So I can't make reason of that.</p> <p>20 Q Okay. Earlier --</p> <p>21 A So based on the records we have, my</p> <p>22 understanding is that we've had 395 bond</p>	<p>155</p> <p>1 A I did an investigation of looking for</p> <p>2 the bond cancellations over the last two years.</p> <p>3 Laura Piispanen used to send them to us, right, we</p> <p>4 used to get them from RLI. I don't have any bond</p> <p>5 cancellations. So I don't have the ability to</p> <p>6 determine who's being -- you know, I have a</p> <p>7 spreadsheet from you guys that say that bonds are</p> <p>8 canceled, bonds I've paid breaches on. And in</p> <p>9 response to a letter that counsel sent, you guys</p> <p>10 said you paid it too. You didn't -- but you sent</p> <p>11 me a spreadsheet saying it was canceled. So</p> <p>12 without having any independent knowledge of what</p> <p>13 those documents are, that's why we've asked</p> <p>14 your -- asked you to provide us those documents.</p> <p>15 Q Did you make an inquiry of your --</p> <p>16 either your staff or your counsel as to whether or</p> <p>17 not Nexus was receiving bond cancellation notices</p> <p>18 from RLI?</p> <p>19 MR. SHOREMAN: Objection. And let me</p> <p>20 just caution the witness, any communications with</p> <p>21 counsel would be privileged and you waive that</p> <p>22 privilege by disclosing that.</p>
<p>154</p> <p>1 cancellations but it could be more.</p> <p>2 Q Okay.</p> <p>3 A Certainly could be.</p> <p>4 Q All right. And that number comes from</p> <p>5 RLI, the cancellation --</p> <p>6 A Correct.</p> <p>7 Q -- bond? Okay. And you say that Nexus</p> <p>8 has not received cancellation notices from RLI</p> <p>9 since when?</p> <p>10 A February 2020.</p> <p>11 Q 2020?</p> <p>12 A Sorry, 2018, my apologies.</p> <p>13 Q And what is the basis of your</p> <p>14 understanding?</p> <p>15 A What is the basis of my understanding?</p> <p>16 Q Yes?</p> <p>17 A That we used to received cancellations</p> <p>18 and we don't anymore. We used to get copies of</p> <p>19 the cancellations and we don't get them.</p> <p>20 Q When you say "we don't," what is</p> <p>21 that -- based on what? Who told you that or what</p> <p>22 investigation did you do to derive that?</p>	<p>156</p> <p>1 MS. KATSANTONIS: I'm just asking him</p> <p>2 whether he's made an inquiry.</p> <p>3 A I have spoken to counsel.</p> <p>4 Q Okay. And so --</p> <p>5 A And I'm not going to disclose those.</p> <p>6 Q No. But your testimony is that Nexus</p> <p>7 has not received bond cancellation notices from</p> <p>8 RLI since 2018?</p> <p>9 A Correct.</p> <p>10 Q Okay.</p> <p>11 MR. SHOREMAN: I think a couple minutes</p> <p>12 ago it was 2019.</p> <p>13 A It's been February 2018.</p> <p>14 MR. SHOREMAN: '18, okay.</p> <p>15 MS. KATSANTONIS: I'm going to mark</p> <p>16 this exhibit.</p> <p>17 (Donovan Exhibit 7 marked for</p> <p>18 identification and attached to the transcript.)</p> <p>19 MR. SHOREMAN: Thank you.</p> <p>20 Q So this is an email from</p> <p>21 Laura Piispanen from RLI to a number of people</p> <p>22 which includes Erik Schneider at Nexus, Hazzar</p>

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<p>1 Perdomo at Nexus, Richard Moore at Nexus as well 2 as a number of your attorneys, correct? 3 <b>A I can see that, yes.</b> 4 <b>Q</b> And isn't RLI providing you with a copy 5 of an immigration bond cancellation? 6 <b>A I do see an email that I'm not on where</b> 7 <b>there is one cancellation. But we have</b> 8 <b>significant numbers of cancellations that you</b> 9 <b>reference on a spreadsheet that you've produced</b> 10 <b>that don't have cancellations that have been</b> 11 <b>produced to us. So you can show me one. I can</b> 12 <b>show you that there are -- there are -- on your</b> 13 <b>own production, there are bonds that say</b> 14 <b>they're -- that you've received cancellations on</b> 15 <b>that you've never forwarded the cancellations for.</b> 16 <b>That's true. And we have asked that you make that</b> 17 <b>right. We asked that you make it right about the</b> 18 <b>one particular client last week and that you</b> 19 <b>further produce all the records so we would have</b> 20 <b>them. We haven't received, as far as I</b> 21 <b>understand, any of the further production. And so</b> 22 <b>I have a significant number of RLI clients on a</b></p>	<p>157 1 <b>Q</b> How do you know that? How do you know 2 that, Mr. Donovan, when you testified -- 3 <b>A I'm sorry --</b> 4 <b>Q</b> -- that you haven't received any -- 5 <b>A Are you going to continue to interrupt</b> 6 <b>me or can I answer a question?</b> 7 <b>Q</b> Yes? 8 <b>A</b> As you are well aware because you've 9 received correspondence, we have been looking at 10 your discovery responses and your discovery 11 responses tell us that certain bonds are canceled 12 that we paid. Now that's a problem for me, right? 13 And so I've been following up and I would -- 14 <b>Q</b> Which ones? 15 <b>A</b> -- ask for the documentation. 16 <b>Q</b> Which one, it was just one you sent a 17 notice. 18 <b>A</b> There's one specific and then there are 19 a large number of bonds where you guys say they're 20 canceled, we haven't received the cancellations. 21 What we have asked you to do is provide us all the 22 cancellations. Why can't you do that? If you</p>
<p>158 1 <b>spreadsheet that you guys produced that say that</b> 2 <b>those bonds are canceled without any detail --</b> 3 <b>Q</b> Mr. Donovan, I would suggest that 4 you -- 5 <b>A -- attached to it and my point is that,</b> 6 <b>I mean, that's a problem.</b> 7 <b>Q</b> Mark this. 8 (Donovan Exhibit 8 marked for 9 identification and attached to the transcript.) 10 <b>Q</b> Here's another email communication from 11 Laura Piispanen dated November 13th, 2019, 12 forwarding a notice of immigration bond canceled 13 and that is similarly sent to Mr. Schneider of 14 Nexus, Hazzar Perdomo, and numerous -- Richard 15 Moore, and numerous counsel of Nexus; is that 16 correct? 17 <b>A</b> And I can certainly see that I'm not on 18 this email and didn't see it before. But what I 19 will tell you is that, again, we have a 20 significant number of bonds that you guys have 21 reported canceled that you've not provided 22 cancellation for.</p>	<p>159 1 <b>have them why not just give them to us?</b> 2 <b>Q</b> Mr. Donovan, are you not aware that you 3 have been contemporaneously given notice after 4 notice of all the bond cancellation forms? 5 <b>A I do not believe that's true.</b> 6 <b>Q</b> Well, are you -- 7 <b>A We have bonds cancellations that are on</b> 8 <b>your spreadsheet --</b> 9 <b>Q</b> Let's go through a couple more. We'll 10 just keep going through them then. 11 <b>A Would you give me the one to the client</b> 12 <b>that we produced to you on Friday. The one that</b> 13 <b>we --</b> 14 <b>Q</b> We gave it to you yesterday. 15 <b>A But you -- why is it you have it listed</b> 16 <b>as canceled, Ms. Katsantonis? Why is it that you</b> 17 <b>have it listed on the canceled in one place,</b> 18 <b>Ms. Katsantonis, and on another you're demanding</b> 19 <b>that we pay it?</b> 20 <b>See, your records don't match and</b> 21 <b>you've got to provide an explanation for that.</b> 22 <b>Q</b> Mr. Donovan. Mr. Donovan, this is my</p>
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<p>1 deposition of you not mine -- yours of me. So</p> <p>2 let's move forward.</p> <p>3 <b>A Right, but --</b></p> <p>4 Q Can you mark this, please?</p> <p>5 <b>A I mean, you can continue to throw</b></p> <p>6 <b>documents in front of me to show me that there's</b></p> <p>7 <b>been a cancellation here or there that's been</b></p> <p>8 <b>delivered, but unless you're prepared to show us</b></p> <p>9 <b>all the cancellations and have them consistent</b></p> <p>10 <b>with the production that you provided to attorneys</b></p> <p>11 <b>of the cancellations, then this is just --</b></p> <p>12 Q I believe your testimony, Mr. Donovan,</p> <p>13 is that there have been no cancellation notices</p> <p>14 provided to Nexus in the last two years, wasn't</p> <p>15 that your testimony?</p> <p>16 <b>A As I was aware.</b></p> <p>17 Q Right. But now you realize --</p> <p>18 <b>A What I'm saying --</b></p> <p>19 Q You realize your testimony was</p> <p>20 erroneous, right, Mr. Donovan? That in fact,</p> <p>21 there were consistent notices of cancellation</p> <p>22 provided to Nexus?</p>	<p>161</p> <p>1 Q All right. Let me just --</p> <p>2 MS. KATSANTONIS: I apologize if you</p> <p>3 think so.</p> <p>4 Q So looking at this 2018 one,</p> <p>5 Mr. Donovan.</p> <p>6 <b>A I would like to have all of the I340s.</b></p> <p>7 <b>I would like to have all of the I340s. I'll</b></p> <p>8 <b>answer questions about the I340s, I'd like a</b></p> <p>9 <b>production of them. I would like them here.</b></p> <p>10 Q Mr. Donovan, looking at the exhibit in</p> <p>11 front of you, it's an Exhibit dated April 2nd.</p> <p>12 (Donovan Exhibit 9 marked for</p> <p>13 identification and attached to the transcript.)</p> <p>14 Q This is one dated April 2nd, 2018, sent</p> <p>15 to notice at Nexus help. It's another copy of a</p> <p>16 notice of immigration bond cancel. Do you see</p> <p>17 that, Mr. Donovan?</p> <p>18 <b>A I do.</b></p> <p>19 Q And do you believe --</p> <p>20 MR. SHOREMAN: Let me just go off -- I</p> <p>21 don't want to go off the record, I want to say</p> <p>22 this on the record. My client's issue is that</p>
<p>162</p> <p>1 MR. SHOREMAN: Objection. Objection.</p> <p>2 <b>A I disagree. I don't think this is</b></p> <p>3 <b>consistent. One-off emails are not consistent.</b></p> <p>4 <b>You have --</b></p> <p>5 Q How many do you see? I just sent you</p> <p>6 three. Would you like me to go get 50 more?</p> <p>7 <b>A I'd like you to go get them all.</b></p> <p>8 MR. SHOREMAN: Objection, again.</p> <p>9 <b>A Bring them all here and let us take</b></p> <p>10 <b>them. By the way --</b></p> <p>11 Q So your testimony was inaccurate,</p> <p>12 right, Mr. Donovan?</p> <p>13 <b>A No, it's not.</b></p> <p>14 Q You said no. You said we haven't</p> <p>15 received any notices since 2018.</p> <p>16 <b>A Why not --</b></p> <p>17 MR. SHOREMAN: Objection.</p> <p>18 <b>A Why not --</b></p> <p>19 MR. SHOREMAN: Please, please.</p> <p>20 <b>A Why not just be honest?</b></p> <p>21 MR. SHOREMAN: You're being</p> <p>22 argumentative, Ms. Katsantonis.</p>	<p>163</p> <p>1 this should have been produced in response to</p> <p>2 discovery.</p> <p>3 MS. KATSANTONIS: We're going off the</p> <p>4 record. This is not appropriate. This is my</p> <p>5 deposition.</p> <p>6 MR. SHOREMAN: Go on.</p> <p>7 MS. KATSANTONIS: I'm not going through</p> <p>8 a discovery dispute.</p> <p>9 MR. SHOREMAN: Well, you are going</p> <p>10 through a discovery dispute.</p> <p>11 MS. KATSANTONIS: I'm addressing</p> <p>12 Mr. Donovan's testimony.</p> <p>13 MR. SHOREMAN: He said he did not</p> <p>14 receive these in discovery as he should have.</p> <p>15 MS. KATSANTONIS: That's not what he</p> <p>16 said.</p> <p>17 MR. HARRIS: That's not what he said.</p> <p>18 He's not received a notice of cancellation in two</p> <p>19 years.</p> <p>20 MR. SHOREMAN: You put four in front of</p> <p>21 him.</p> <p>22 MR. HARRIS: In two years he hasn't</p>
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<p>1 received one.</p> <p>2 MS. KATSANTONIS: Right.</p> <p>3 MR. SHOREMAN: Okay. Spend the rest of</p> <p>4 the day on a "gotcha."</p> <p>5 MS. KATSANTONIS: I'm just trying to</p> <p>6 make the record clear.</p> <p>7 THE WITNESS: Well, if you make it --</p> <p>8 MR. SHOREMAN: The record would be</p> <p>9 clear if you meet your discovery obligations and</p> <p>10 provide these documents.</p> <p>11 Q Is it true that you did -- isn't it</p> <p>12 true, Mr. Donovan, that you did receive</p> <p>13 cancellation notices within the last two years</p> <p>14 from RLI?</p> <p>15 MR. SHOREMAN: Objection. The</p> <p>16 documents don't have any evidence whatsoever that</p> <p>17 Mr. Donovan received them.</p> <p>18 MS. KATSANTONIS: He's speaking on</p> <p>19 behalf of Nexus. They all have Nexus' names on</p> <p>20 it.</p> <p>21 MR. SHOREMAN: Then why don't you ask</p> <p>22 that question.</p>	<p>165</p> <p>1 of me that were not sent to me, yes. That is</p> <p>2 correct. However, I would renew my request that</p> <p>3 RLI actually comply with the discovery order and</p> <p>4 provide all of the cancellations.</p> <p>5 Q Is it your testimony that no more than</p> <p>6 the four that I've provided you were provided from</p> <p>7 RLI to Nexus?</p> <p>8 A I think my testimony was you provided</p> <p>9 me four.</p> <p>10 Q Right?</p> <p>11 A I think that's what I said.</p> <p>12 Q But do you --</p> <p>13 A My testimony is what the words I said</p> <p>14 are. I mean, that's what I said. I said you</p> <p>15 provided me four. It would be my hope that you</p> <p>16 would provide the rest. If you want to do that</p> <p>17 right now we can do it because I want to see them</p> <p>18 all.</p> <p>19 Q Well --</p> <p>20 A Or if you want to give them to me after</p> <p>21 that's fine too.</p> <p>22 Q Mr. Donovan, my testimony -- my</p>
<p>166</p> <p>1 MR. HARRIS: It's a 30(b)(6)</p> <p>2 deposition, so "you" means Nexus. She just did.</p> <p>3 MS. KATSANTONIS: It's a preliminary</p> <p>4 question.</p> <p>5 MR. SHOREMAN: Why don't you ask that</p> <p>6 question.</p> <p>7 MS. KATSANTONIS: Mr. Shoreman, please.</p> <p>8 MR. SHOREMAN: You didn't, you said --</p> <p>9 BY MS. KATSANTONIS:</p> <p>10 Q Mr. Donovan, isn't it true that Nexus</p> <p>11 received notices of cancellation from RLI over the</p> <p>12 last -- course of the last two years?</p> <p>13 A It appears that Nexus did receive a</p> <p>14 smattering of notices. Nexus would hope that RLI</p> <p>15 would produce all of the cancellations so that we</p> <p>16 could determine which invoices you have improperly</p> <p>17 collected and not refunded to us.</p> <p>18 Q And with regard to -- so when you</p> <p>19 testified earlier that Nexus had received no</p> <p>20 notices of cancellation in the last two years,</p> <p>21 that was inaccurate?</p> <p>22 A I missed the four that you put in front</p>	<p>167</p> <p>1 question to you is based on your testimony. So</p> <p>2 my -- I'm just trying to get your testimony</p> <p>3 accurate.</p> <p>4 A I think you are testifying.</p> <p>5 MR. SHOREMAN: Please don't direct my</p> <p>6 witness, Ms. Katsantonis. Go ahead.</p> <p>7 MR. HARRIS: Please instruct your</p> <p>8 witness then to answer the questions instead of</p> <p>9 asking questions of --</p> <p>10 MS. KATSANTONIS: Counsel.</p> <p>11 MR. SHOREMAN: Continue in the vein you</p> <p>12 are, Mr. Donovan, and answer the question freely</p> <p>13 and responsively as you are.</p> <p>14 BY MS. KATSANTONIS:</p> <p>15 Q I just want to be clear that you --</p> <p>16 that you -- do you contend that there are, other</p> <p>17 than the four that I've shown you, is it your</p> <p>18 testimony that Nexus received no other notices of</p> <p>19 bond cancellation forms in the last two years from</p> <p>20 RLI?</p> <p>21 A My testimony is that RLI has not</p> <p>22 provided all of the bond cancellations as</p>

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<p>169</p> <p>1 received. I'm hartened that we have apparently</p> <p>2 received a few. If there are more, that's</p> <p>3 wonderful.</p> <p>4 Q So you don't know?</p> <p>5 A If you'll produce -- if you can produce</p> <p>6 a full production of them, I guess this -- you</p> <p>7 asked a question earlier about bad faith. This is</p> <p>8 bad faith. Hiding the ball, right? What is RLI</p> <p>9 trying to hide? Why not just give us the</p> <p>10 cancellation. You're trying to hide the fact that</p> <p>11 you collected money on top of those cancellations</p> <p>12 and that you received that money under false</p> <p>13 pretenses. That what you're trying to hide.</p> <p>14 That's what's happening here and you know that.</p> <p>15 MR. HARRIS: Can you --</p> <p>16 MR. SHOREMAN: Vivian. No.</p> <p>17 Q Do you know sitting here, how many bond</p> <p>18 cancellation forms Nexus provided to -- RLI</p> <p>19 provided to Nexus?</p> <p>20 A I do not.</p> <p>21 Q So you don't know whether or not --</p> <p>22 A I know that we --</p>	<p>171</p> <p>1 whether in the last two years how many bond</p> <p>2 cancellation forms were provided to Nexus from</p> <p>3 RLI?</p> <p>4 A I do not.</p> <p>5 Q Okay. And can you estimate how many</p> <p>6 bond cancellation forms were provided to Nexus</p> <p>7 from RLI?</p> <p>8 A I cannot. I know we have that number</p> <p>9 and I can get it for you. I'll get it for you at</p> <p>10 the break.</p> <p>11 Q And do you know how many RLI bonds are</p> <p>12 outstanding?</p> <p>13 A I can do the calculation based on what</p> <p>14 we just talked about, the total number of bonds</p> <p>15 outstanding versus the total number of</p> <p>16 cancellations. But again, it's cancellations as</p> <p>17 reported by RLI and since we don't have the full</p> <p>18 data, I don't know that those numbers are</p> <p>19 accurate.</p> <p>20 Q All right. RLI contends that the</p> <p>21 aggregate, that there are 1,767 bonds that have</p> <p>22 not yet been discharged.</p>
<p>170</p> <p>1 Q -- it's four or 100 or 200; is that</p> <p>2 correct?</p> <p>3 A Well, are you going to finish a</p> <p>4 question so I can answer it, Ms. Katsantonis? You</p> <p>5 continue to ask the question after you've asked</p> <p>6 it. It's a very confusing thing.</p> <p>7 Q Mr. Donovan. If you could start your</p> <p>8 answer with yes or no and then if you want to</p> <p>9 explain why it's a yes or no, that's fine. But my</p> <p>10 question to you is do you know how many bond</p> <p>11 cancellation forms RLI has provided to Nexus in</p> <p>12 the last two years?</p> <p>13 A Yes. Let me -- I think -- so what we</p> <p>14 have and here's what I know, okay? I know that</p> <p>15 there are approximately 395 bond cancellations</p> <p>16 based on the production that you have made. That</p> <p>17 is including actual cancellations and spreadsheet</p> <p>18 representations. I want all the cancellations.</p> <p>19 That's what I'm saying.</p> <p>20 Q Okay?</p> <p>21 A I want all the cancellations.</p> <p>22 Q So aside from discovery, do you know</p>	<p>172</p> <p>1 Do you know whether that's accurate?</p> <p>2 A I would have no way of knowing.</p> <p>3 Q Can you dispute that number?</p> <p>4 MR. SHOREMAN: Objection. Objection.</p> <p>5 You're asking him -- you used the term discharge</p> <p>6 and it's undefined. I object to the question.</p> <p>7 Answer if you can.</p> <p>8 A And I'm going to -- so can you repeat</p> <p>9 the question?</p> <p>10 Q Yeah, sure.</p> <p>11 RLI contends that there are 1,767 RLI</p> <p>12 bonds that had not -- that have not yet been</p> <p>13 discharged.</p> <p>14 Can you dispute that?</p> <p>15 A Based on the information I have and the</p> <p>16 cancellations I've received, I can't dispute that.</p> <p>17 I wouldn't necessarily want to do that.</p> <p>18 Q Okay. And then RLI --</p> <p>19 A I'm sorry. Really quick, I have a bio</p> <p>20 break. It's not going to take long but I'm going</p> <p>21 to be right back. Sorry, guys.</p> <p>22 THE VIDEOGRAPHER: We are going off the</p>

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<p>173</p> <p>1 record at 15:02.</p> <p>2 (Recess taken.)</p> <p>3 THE VIDEOGRAPHER: We are back on the</p> <p>4 record at 15:11.</p> <p>5 BY MS. KATSANTONIS:</p> <p>6 Q All right. And then prior to the</p> <p>7 break, we were talking about the number of RLI</p> <p>8 outstanding bonds and so I just had one more</p> <p>9 question with that.</p> <p>10 RLI contends that the aggregate amount</p> <p>11 of those 1,767 bonds that have not yet been</p> <p>12 discharged is 21,404,950.</p> <p>13 Do you dispute that figure?</p> <p>14 A I believe that's correct.</p> <p>15 Q Okay. All right. Now, we were talking</p> <p>16 about, and you're much more familiar with this</p> <p>17 area than I am.</p> <p>18 A And let me apologize -- by the way</p> <p>19 because I know this area and so none of my answers</p> <p>20 are meant to sound like, you know, when I looked</p> <p>21 at you weird, I was just trying to understand your</p> <p>22 question because it didn't make sense to me. I'm</p>	<p>175</p> <p>1 notice to the AAO?</p> <p>2 A Right.</p> <p>3 Q Okay. And then when we say disputes,</p> <p>4 we are going to be talking about bond breach</p> <p>5 invoices?</p> <p>6 A Not necessarily. Because there's</p> <p>7 another category of disputes we probably have to</p> <p>8 identify and talk about.</p> <p>9 Q Okay. What is that?</p> <p>10 A And that is when a bond first breaches.</p> <p>11 So there's no invoice, right? It's just a breach.</p> <p>12 But when you have proof that the breach is</p> <p>13 invalid, that the breach was done incorrectly,</p> <p>14 right, you can submit a dispute to the bond unit</p> <p>15 officer and it requires a letter from the obligor,</p> <p>16 from the surety obligor. But you can dispute at</p> <p>17 that level and that -- when I talk about disputes,</p> <p>18 when I reference disputes that I want to be able</p> <p>19 to make, that's what I'm talking about, Vivian.</p> <p>20 So I just want to make sure we're understanding</p> <p>21 one another. It is possible if you file an appeal</p> <p>22 and you file the appeal late, it is possible that</p>
<p>174</p> <p>1 not trying to be -- you know, I want to be</p> <p>2 respectful.</p> <p>3 Q I appreciate that.</p> <p>4 A Yeah, of course.</p> <p>5 Q In fact, I was going to just say the</p> <p>6 same thing. I was going to ask you about appeals</p> <p>7 and disputes, obviously you know that area better</p> <p>8 than I do.</p> <p>9 So I'm just trying to make sure you and</p> <p>10 I are on the same page when we're talking about</p> <p>11 something.</p> <p>12 A Of course. I think that makes sense.</p> <p>13 Q So do you recognize a distinction</p> <p>14 between bond breach appeals which are submitted</p> <p>15 within 33 days, you know, 30 days or 33 days of a</p> <p>16 bond breach notice and decided by DHS's</p> <p>17 administrative appeals office and disputes of bond</p> <p>18 breach invoices? Is there a distinction there?</p> <p>19 A There is a distinction.</p> <p>20 Q Okay. So can we use the word, you</p> <p>21 know, as we go forward when we talk about appeals,</p> <p>22 that's going to be the appeals of the bond breach</p>	<p>176</p> <p>1 that can be considered a dispute, right?</p> <p>2 But it's also possible to dispute a</p> <p>3 breach when it first occurs, before an invoice is</p> <p>4 ever issued. And that is the dispute process that</p> <p>5 I'm referring to.</p> <p>6 Q Okay. So you kind of mixed terms there</p> <p>7 again. I just want to be careful that I</p> <p>8 understand it.</p> <p>9 So you're talking about when a bond</p> <p>10 breach first happens, so within the 33 days.</p> <p>11 A Correct.</p> <p>12 Q Okay. Then within that 33 days, rather</p> <p>13 than actually filing an appeal, you're saying you</p> <p>14 can go to the bond unit officer?</p> <p>15 A Yeah, the bond manager.</p> <p>16 Q Okay.</p> <p>17 A Each of the ICE officers that process</p> <p>18 bonds have a bond manager.</p> <p>19 Q Right. And that requires a writing, a</p> <p>20 letter.</p> <p>21 A The surety has to give permission, yes.</p> <p>22 Q And then how -- yeah, where is that</p>

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<p>177</p> <p>1 procedure outlined?</p> <p>2 <b>A In the bond management handbook.</b></p> <p>3 Q Okay?</p> <p>4 <b>A The DHS's bond management handbook.</b></p> <p>5 <b>I'm sorry, let me be specific.</b></p> <p>6 Q Okay. And how often -- right.</p> <p>7 Are there any grounds that you can</p> <p>8 raise in that procedure that you couldn't also</p> <p>9 raise in an appeal procedure?</p> <p>10 <b>A Yes.</b></p> <p>11 Q What is that?</p> <p>12 <b>A Well, you can raise -- the appeal</b></p> <p>13 <b>feature is largely about questions of law or</b></p> <p>14 <b>questions of like notice of defect, those types of</b></p> <p>15 <b>things, right? A dispute is never about notice of</b></p> <p>16 <b>defect because that's appropriately taken before</b></p> <p>17 <b>the AAO. A dispute is when there is a -- at the</b></p> <p>18 <b>pre, I'm talking about the pre-invoice stage of</b></p> <p>19 <b>dispute, right? Because you can also file a late</b></p> <p>20 <b>appeal and it be called a dispute. So I want to</b></p> <p>21 <b>make sure we're talking about the same thing. But</b></p> <p>22 <b>if you dispute a breach shortly after like what</b></p>	<p>179</p> <p>1 <b>win on a dispute, right? Because the AAO is</b></p> <p>2 <b>looking for a case, you know, a case law. They're</b></p> <p>3 <b>looking for some kind of precedent. You have a</b></p> <p>4 <b>legal issue. You have a notice issue. Some kind</b></p> <p>5 <b>of defect issue.</b></p> <p>6 Q So my question was what kind of</p> <p>7 pre-invoice dispute can you not raise on appeal?</p> <p>8 <b>A I suppose you could raise the fact that</b></p> <p>9 <b>the person had complied and you could raise</b></p> <p>10 <b>substantial compliance on appeal.</b></p> <p>11 <b>So there isn't anything that you</b></p> <p>12 <b>couldn't raise on appeal, but you'd be making the</b></p> <p>13 <b>argument on appeal under substantial compliance</b></p> <p>14 <b>which is a difficult bar to meet, right? So it's</b></p> <p>15 <b>a difficult thing to do whereas going to the bond</b></p> <p>16 <b>manager that oversaw the inappropriate breach and</b></p> <p>17 <b>having them fix their mistake is easier than going</b></p> <p>18 <b>to an appeal office and waiting months for them to</b></p> <p>19 <b>read your brief and hope that they understand what</b></p> <p>20 <b>happened to them.</b></p> <p>21 Q Okay?</p> <p>22 <b>A It's just a much more direct and easy</b></p>
<p>178</p> <p>1 we're talking about, right, you can dispute the</p> <p>2 breach. You would dispute the breach based on the</p> <p>3 fact that there is some kind of error. You</p> <p>4 typically would use a dispute when there's an</p> <p>5 error.</p> <p>6 Q What kind of error?</p> <p>7 <b>A Maybe for example like I told you the</b></p> <p>8 <b>person got released and shipped to New York but</b></p> <p>9 <b>then they get called into court two days later in</b></p> <p>10 <b>the detention center they got released from. They</b></p> <p>11 <b>can't even come back there if they want to so</b></p> <p>12 <b>they're obviously not going to be there and</b></p> <p>13 <b>they're obviously going to get a notice to deliver</b></p> <p>14 <b>for that. But it's not their fault, you see. So</b></p> <p>15 <b>what you would do is let's say the notice to</b></p> <p>16 <b>deliver didn't get served or we didn't know about</b></p> <p>17 <b>it or they didn't go and there's a breach, then --</b></p> <p>18 <b>in the same situation where are they going to send</b></p> <p>19 <b>the notice letter? They're going to send the</b></p> <p>20 <b>notice letter to where the person is.</b></p> <p>21 Q But can you raise that on an appeal?</p> <p>22 <b>A You can, but you're much more likely to</b></p>	<p>180</p> <p>1 <b>way to do it.</b></p> <p>2 Q On how many RLI -- are you familiar</p> <p>3 with grounds of an appeal or dispute based on</p> <p>4 DHS's failure to provide a questionnaire?</p> <p>5 <b>A I am aware of that as an issue that has</b></p> <p>6 <b>been raised on appeal by obligors.</b></p> <p>7 Q And which of the three proceedings</p> <p>8 would that most appropriately be raised?</p> <p>9 <b>A That would be raised appropriately --</b></p> <p>10 <b>well, you can raise it -- it would most</b></p> <p>11 <b>appropriately be raised in an appeal.</b></p> <p>12 Q And have -- and has DHS rejected those</p> <p>13 appeals as a -- based on the failure to provide a</p> <p>14 questionnaire?</p> <p>15 <b>A Many of them, yes.</b></p> <p>16 Q Are there any that they have approved</p> <p>17 or affirmed based on the failure to provide a</p> <p>18 questionnaire?</p> <p>19 <b>A I believe we have had those. I don't</b></p> <p>20 <b>believe any of them are RLI bonds, I have to check</b></p> <p>21 <b>but I'm relatively certain that none of them are</b></p> <p>22 <b>RLI bonds.</b></p>

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<p>1 Q Okay. But you think there are some 2 that have been approved. 3 A Yes. 4 Q How many? 5 A There is one that I know of. So I 6 can't testify beyond that. I know of one. I'll 7 have to look to see if others exist. I didn't -- 8 I might have missed -- I didn't -- I didn't look 9 at that because I didn't see that in the 10 categories. I wasn't thinking that we would get 11 to that level but we can certainly -- I can pull 12 that for you. 13 Q That's fine. As you sit here today, 14 you don't know of any more than the one, correct? 15 A Correct. 16 Q Okay. And -- 17 A But I don't know that more don't exist. 18 Q Okay. And with regards -- and do you 19 know how many bond appeals you've issued based on 20 the questionnaire, the failure to provide a 21 questionnaire? 22 A The failure to provide a questionnaire</p>	<p>181 1 appeal that we have filed, we would have filed, 2 likely have filed that as an element of it, not 3 the sole element. 4 Q Okay. And with regard -- how many RLI 5 bonds has an appeal of a bond breach determination 6 been submitted to DHS? 7 A To the AAO? 8 Q Right. 9 A Hold on. And it's the total number of 10 appeals filed, right? 11 Q Uh-huh. 12 A Okay. 13 Q And then also for RLI bonds. 14 A For RLI, yeah. 15 Q Overall and then for RLI. 16 A I'm just doing some adding and I'm 17 having to pull multiple files to do it, so I 18 apologize. Appreciate your patience. Okay. So 19 I -- I would like to supplement my answer. I want 20 to make sure that this is correct because I just 21 counted lines on a spreadsheet and that's not 22 really the best way to give you a qualified answer</p>
<p>182 1 is a -- a topic that we routinely assert amongst 2 other issues on appeal. There is -- there is a 3 settlement that ICE reached with a particular 4 surety, and that settlement provides a different 5 series of expectations for ICE officers to provide 6 detail notice to agents of that surety. 7 Q Is that AmWest? 8 A It is, the AmWest agreement, yes, 9 ma'am. 10 Q But how many appeals did you file based 11 on questionnaires? 12 A We have -- we have raised the 13 questionnaire on appeal and we intend to raise it 14 in a court action to try to make those conditions 15 consistent across the board. 16 Q Okay. But how many bonds have you 17 issued an appeal based on failure of DHS to 18 provide a questionnaire? 19 A I'm not sure of the total amount. I 20 will find out at a break. 21 Q Is it hundreds or thousands? 22 A It's probably thousands. I mean, any</p>	<p>183 1 so I'd really like to be able to give you that, if 2 we could -- at my next break I will owe you that, 3 okay? Because I want to make sure that the number 4 I just added up is correct. 5 Q Is that -- 6 A The number of appeals, RLI. 7 Q Just to keep the testimony going -- 8 A Of course. 9 Q -- can you give me a range? 10 A We can break and add it up. I would 11 rather give you a real number. I just don't want 12 to put something on the record that's not 13 accurate. 14 MR. SHOREMAN: Don't you have a call at 15 3:30 anyway? 16 A I do. Yeah, it's only five minutes. 17 MS. KATSANTONIS: Three minutes. 18 A Why don't we break for five and then 19 I'll have that for you. 20 THE VIDEOGRAPHER: Off the record at 21 15:24. 22 (Recess taken.)</p>

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<p>185</p> <p>1 THE VIDEOGRAPHER: We are back on the</p> <p>2 record at 15:42.</p> <p>3 BY MS. KATSANTONIS:</p> <p>4 Q All right. So before we took our break</p> <p>5 you were going to, Mr. Donovan, I believe you were</p> <p>6 going to check the number of invoices --</p> <p>7 A Yes, ma'am.</p> <p>8 Q -- for which Nexus has caused an appeal</p> <p>9 to be -- wait, let me strike that.</p> <p>10 How many -- okay, so, first of all, we</p> <p>11 were going to ask, right, how many appeals on the</p> <p>12 Nexus bonds have been filed?</p> <p>13 A Right. And I was able to gather that.</p> <p>14 So our records indicate that 208 appeals have been</p> <p>15 filed on RLI bonds that are Nexus secured.</p> <p>16 Q And what about program wide?</p> <p>17 A Program wide, our figures indicate that</p> <p>18 1,457 appeals have been filed globally.</p> <p>19 Q Okay. And of the 1,457 appeals filed</p> <p>20 globally, how many have been successful?</p> <p>21 A Perhaps I could have anticipated that.</p> <p>22 Nine of our RLI appeals have been successful. I</p>	<p>187</p> <p>1 Q Okay. And Nexus has paid a filing fee</p> <p>2 for all appeals whether it's RLI or the 1,457</p> <p>3 appeals?</p> <p>4 A That's correct.</p> <p>5 Q And of the appeals filed, the Nexus</p> <p>6 bond appeals, how many of those were based on the</p> <p>7 Pereira decision?</p> <p>8 A Well, many were based on the Pereira</p> <p>9 decision, at least in part. We filed appeals for</p> <p>10 any bond that was the basis, the basis of which</p> <p>11 was a notice to appear that was issued without a</p> <p>12 time or date specific on it.</p> <p>13 Q Right. But do you know how many bonds?</p> <p>14 A I don't.</p> <p>15 Q The vast majority of them or --</p> <p>16 A The vast majority did not have the time</p> <p>17 or place and so the vast majority had Pereira as</p> <p>18 an element, yes.</p> <p>19 Q Okay. And what about --</p> <p>20 A Any that didn't have the time or place</p> <p>21 on the NTA, right, because that was the basis of</p> <p>22 the Pereira decision, so if it didn't say a time</p>
<p>186</p> <p>1 have that handy, quite proud to say. As far as a</p> <p>2 global appeal successful number, I'll have to get</p> <p>3 that for you. But I'll get it for you before we</p> <p>4 break today, okay?</p> <p>5 Q Okay.</p> <p>6 A Or I can go look. But you don't want</p> <p>7 that.</p> <p>8 Q Of the nine RLI bond appeals that were</p> <p>9 successful, what were the grounds for those nine?</p> <p>10 A I believe two, at least one or two of</p> <p>11 them was the Pereira decision, I believe. There</p> <p>12 were no deficiencies, and perhaps the best thing</p> <p>13 to do would be provide you the nine bonds on a</p> <p>14 spreadsheet with the reasons.</p> <p>15 Do you want me to do that? Because I</p> <p>16 can absolutely do that.</p> <p>17 Q Okay. Yes, I would like that. Sitting</p> <p>18 here today you don't know the basis for each of</p> <p>19 the nine, correct?</p> <p>20 A Not off the top of my head. But we do</p> <p>21 have that information readily available. Happy to</p> <p>22 get it for you before we leave today.</p>	<p>188</p> <p>1 or place it was added under Pereira. And the vast</p> <p>2 majority of bonds -- the vast majority of</p> <p>3 individuals arrested and issued NTAs before the</p> <p>4 Pereira decision were affected by it.</p> <p>5 Q Okay. And how many of the appeals were</p> <p>6 based on DHS's failure to include a questionnaire</p> <p>7 or other paperwork within the bond breach notice?</p> <p>8 A That might be an ancillary added</p> <p>9 element of the appeal. It would not be your main</p> <p>10 reason for appeal, but that would be added in any</p> <p>11 case where we didn't get a spreadsheet -- where we</p> <p>12 didn't get the appropriate information.</p> <p>13 Q So the vast majority?</p> <p>14 A The vast majority that we didn't get --</p> <p>15 yeah, I would say the majority. I don't know that</p> <p>16 I would say vast, because we do get</p> <p>17 spreadsheets -- or worksheets. But I would say</p> <p>18 the majority don't have worksheets.</p> <p>19 Q So to be clear, the vast majority of</p> <p>20 the 208 appeals on RLI bonds are based on the</p> <p>21 Pereira decision?</p> <p>22 A In part, yes.</p>

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<p>189</p> <p>1 Q And that would also apply to the 1,457</p> <p>2 appeals; the vast majority of those appeals were</p> <p>3 based on the Pereira decision?</p> <p>4 A Right. That's a little more. I mean,</p> <p>5 RLI is sort of a snapshot in time, right? So once</p> <p>6 that issue is corrected by the federal government</p> <p>7 there would be no more Pereira appeals on that</p> <p>8 issue. So I would say, yes, but that number is,</p> <p>9 you know, significantly decreasing as a part of</p> <p>10 the global number because obviously the government</p> <p>11 has fixed there NTA issue.</p> <p>12 Does that make sense?</p> <p>13 Q Uh-huh.</p> <p>14 Of the -- whether it's RLI bonds or the</p> <p>15 1,457 appeals, how many of those bonds were upheld</p> <p>16 on the Pereira decision grounds, how many of the</p> <p>17 appeals were granted based on pre?</p> <p>18 A I'm going to have to get that number to</p> <p>19 you.</p> <p>20 Q Will you be able to provide that</p> <p>21 information today?</p> <p>22 A Yes. Of course.</p>	<p>191</p> <p>1 breaches have been rejected as untimely?</p> <p>2 A Okay. So I'm going to at our next</p> <p>3 break pull those and provide that information to</p> <p>4 you. And Ms. Katsantonis, the spreadsheet that</p> <p>5 the nine RLI I'm going to provide a spreadsheet</p> <p>6 with the reasons, the others I'm just going to</p> <p>7 provide, you know, the numbers. Because it would</p> <p>8 probably be too much for me to, you know, come up</p> <p>9 with that spreadsheet for all of them but I will</p> <p>10 provide you a spreadsheet of your nine and the</p> <p>11 reasons. And then I'll provide you the</p> <p>12 information -- I'll answer the questions on the</p> <p>13 other questions. But I just want to be clear that</p> <p>14 I'm going to have to get that and it's going to</p> <p>15 take me a few minutes. I could do it now or I</p> <p>16 could do it at a break.</p> <p>17 Q Okay. A break would be fine. And then</p> <p>18 along those lines, so I asked you -- and that's --</p> <p>19 the information you get is how many submitted</p> <p>20 appeals of RLI have been rejected as untimely?</p> <p>21 A Yeah, and the Pereira question.</p> <p>22 Q Right. And do you know how many of RLI</p>
<p>190</p> <p>1 Q How many submitted appeals of RLI bond</p> <p>2 breaches have been rejected as untimely?</p> <p>3 A I'm sorry, Ms. Katsantonis, can I get a</p> <p>4 clarification on your prior question?</p> <p>5 Q Sure?</p> <p>6 A Did you want the number of Pereira</p> <p>7 granted appeals for RLI or the number of Pereira</p> <p>8 granted appeals universal or both?</p> <p>9 Q Both. Thank you.</p> <p>10 A All right.</p> <p>11 Q Because you're also going to give us</p> <p>12 the figure of how many of the 1,457 appeals were</p> <p>13 successful?</p> <p>14 A That's right.</p> <p>15 Q And the basis of those -- right. And</p> <p>16 you were going to also give us the basis of each</p> <p>17 of the nine?</p> <p>18 A Each of the --</p> <p>19 Q RLI?</p> <p>20 A Yours, right.</p> <p>21 Q All right. So then my next question</p> <p>22 was how many submitted appeals of RLI bond</p>	<p>192</p> <p>1 bond breaches appeals were confirmed to have been</p> <p>2 received by DHS within 33 days of the breach</p> <p>3 notice?</p> <p>4 A Yeah, I can -- I can add that up.</p> <p>5 Q Okay.</p> <p>6 A But I'm going to have to use the same</p> <p>7 spreadsheet I'm going to use for the other</p> <p>8 questions so I'll just do that at the break and</p> <p>9 get you all those answers at once, if that's okay,</p> <p>10 Ms. Katsantonis.</p> <p>11 Q Yes. Of the nine RLI bond appeals that</p> <p>12 you state have been sustained, how many of those</p> <p>13 resulted in a cancellation of the bond as</p> <p>14 confirmed by DHS's issuance of an I391 notice of</p> <p>15 cancellation?</p> <p>16 A There would either be a re -- there</p> <p>17 either would be a notice of cancellation or</p> <p>18 redetermination or reclassification of the bond.</p> <p>19 I'll get those numbers for you. So I'll --</p> <p>20 Q Okay.</p> <p>21 A In the spreadsheet, Ms. Katsantonis, it</p> <p>22 will say whether it was a cancellation or whether</p>

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<p>193</p> <p>1 the breach was reissued – I'm sorry, the bond was</p> <p>2 reissued.</p> <p>3 Q Like a reinstatement of the bond.</p> <p>4 A Thank you so much. There's that</p> <p>5 inartful communication. I knew it would catch up</p> <p>6 to me.</p> <p>7 Q Okay. So Nexus including through</p> <p>8 Juliana Johnson and payment of the filing fees has</p> <p>9 worked with Big Marco to submit most of the</p> <p>10 appeals that have been submitted in RLI bonds,</p> <p>11 right?</p> <p>12 A That is correct.</p> <p>13 Q And on how many occasions was Nexus</p> <p>14 prevented from submitting an appeal by anything</p> <p>15 that RLI did or did not do?</p> <p>16 A An appeal?</p> <p>17 Q Uh-huh.</p> <p>18 A Your client issued a cease and desist</p> <p>19 request on appeals. We clarified that the appeals</p> <p>20 were being filed by the co-obligor. My</p> <p>21 understanding is that RLI has done nothing to</p> <p>22 prevent the co-obligor from filing appeals, which</p>	<p>195</p> <p>1 the breach with the bond unit officer and in each</p> <p>2 of those instances we were denied.</p> <p>3 At the culmination of that, we stopped</p> <p>4 requesting because it was clear that there was no</p> <p>5 circumstance or accommodation of circumstances</p> <p>6 that would compel RLI to actually give us this</p> <p>7 right or authority.</p> <p>8 Q Are there 47 separate requests?</p> <p>9 A I believe it was made in several</p> <p>10 emails, one of which includes 20 or 30 specific</p> <p>11 documents related to individual program</p> <p>12 participants. I think you have to add them up</p> <p>13 over the multiple emails.</p> <p>14 Q Okay. All right. What kind of</p> <p>15 documents were included for these appeals?</p> <p>16 A As I remember –</p> <p>17 Q For the disputes. Let me call them</p> <p>18 disputes.</p> <p>19 A Right. As I remember based on my</p> <p>20 recollection of reviewing the documents, it varies</p> <p>21 depending on the client because there are</p> <p>22 different documents that would be – that would</p>
<p>194</p> <p>1 we appreciate and he has done so. But I don't</p> <p>2 think we filed any appeals directly with RLI. I</p> <p>3 think they were all with Big Marco. I could be</p> <p>4 wrong about that, but I don't think so.</p> <p>5 Q All right. So there's no specific</p> <p>6 instance that RLI prevented Nexus from submitting</p> <p>7 an appeal?</p> <p>8 A Not an appeal. Dispute's a different</p> <p>9 question.</p> <p>10 Q Okay. So on how many occasions did RLI</p> <p>11 prevent Nexus from submitting a dispute? Is that</p> <p>12 what your contention is?</p> <p>13 A 47 that I'm aware of.</p> <p>14 Q So 47?</p> <p>15 A I believe it's 47.</p> <p>16 Q And what are you defining as a dispute?</p> <p>17 47 times what did RLI fail to do?</p> <p>18 A So Ms. Johnson requested permission</p> <p>19 from Mr. Sussman in approximately 47 cases. There</p> <p>20 might be a few more, might be a few less. But</p> <p>21 there were approximately 47 cases where we had</p> <p>22 asked for permission to contest the reasoning for</p>	<p>196</p> <p>1 matter. I think there were some documents that</p> <p>2 indicated that individuals were still in</p> <p>3 proceedings. I think there were some documents</p> <p>4 that indicated that an individual had gone to the</p> <p>5 wrong – to the wrong court but had been – or</p> <p>6 wrong ICE office but had been told that they could</p> <p>7 go to this different ICE office. They went there,</p> <p>8 they signed in, they did their meeting and they</p> <p>9 still got breached. So, just giving you an – my</p> <p>10 memory, Vivian, but it's basically like several</p> <p>11 different situations with different scenarios.</p> <p>12 Q But all of these instances -- hold</p> <p>13 on -- all of these instances are this "dispute"</p> <p>14 that you talked about, this kind of interim</p> <p>15 dispute of providing a dispute to the bond unit</p> <p>16 officer?</p> <p>17 A That's correct. These are the</p> <p>18 intermediary disputes. These are disputes when a</p> <p>19 breach initially occurs.</p> <p>20 Q And so these are pre-invoice disputes?</p> <p>21 A That is correct.</p> <p>22 Q What about post-invoice disputes? Are</p>

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1 there any occasions that Nexus was prevented from  
2 submitting a post-invoice dispute by anything that  
3 RLI did or did not do?

4 **A Yes. RLI has demanded payment on**  
5 **invoices where we believe we had post-invoice**  
6 **disputes. However, Nexus paid them pursuant to**  
7 **our responsibilities. So you were paid for those.**  
8 **Those are bonds that we would have liked to have**  
9 **had an opportunity to dispute. Many of them we**  
10 **would have liked to have had an opportunity to**  
11 **dispute pre-invoice, right?**

12 Q Let's just try to talk about --

13 **A I just want to make sure we get there.**

14 Q No, I know. I just want to kind of  
15 keep them in buckets a little bit so I can address  
16 them.

17 But as far as the post-invoice disputes  
18 you're not contending here that Nexus -- excuse  
19 me -- that RLI did something that prevented you  
20 from submitting an appeal or a dispute  
21 post-invoice?

22 **A To the extent that RLI may have paid an**

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1 **invoice that was on appeal when we had shown RLI**  
2 **that it was on appeal, that's the only caveat I'm**  
3 **going to say I don't know. I mean, we have had**  
4 **conversations about bonds that were on appeal,**  
5 **where the government didn't cancel the invoice.**  
6 **We've had conversations about this so I know**  
7 **you're aware of that. And you know, those are the**  
8 **only instances where I'm not sure, right?**

9 Q But otherwise, just so I'm clear,  
10 otherwise there are no other post-invoice disputes  
11 that Nexus was prevented from submitting by  
12 anything that RLI did or did not do?

13 **A Other than the ones that RLI may have**  
14 **paid and foreclosed the appeal, that's right.**  
15 **Otherwise, no.**

16 Q Okay. And sitting here today, can you  
17 list or identify any specific one that RLI paid  
18 while there was an appeal? Is that your  
19 contention?

20 **A Yeah, I will get that name for you by**  
21 **the end of the day. I do have at least one.**

22 Q Okay. And right now you're not aware

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1 of any more than just the one?

2 **A Right. But I'm going to do a little**  
3 **research on my break and make sure I give you a**  
4 **full list if I have it.**

5 Q So with regard to the -- with regard to  
6 these 47 disputes, pre-invoice disputes, can you  
7 give me any and all facts and circumstances that  
8 you were aware of?

9 You talked about a couple of emails.  
10 Do you know when they were?

11 **A So I could --**

12 Q Who --

13 **A So I could cite you to Juliana's emails**  
14 **which I think you guys have because they were to**  
15 **our assessment so you would have them as we would.**

16 **And I don't unfortunately have a**  
17 **photographic memory so I can't recount those but I**  
18 **will produce those emails for you if you want a**  
19 **subsequent production, even though I think you**  
20 **already have them.**

21 Q No, I'm trying to get an idea of what  
22 you know today. So sitting here, do you have an

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1 understanding of how many emails were issued and  
2 when?

3 **A I've read -- I've reviewed between six**  
4 **and seven emails. There may have been more that I**  
5 **wasn't copied on. These are emails that I was**  
6 **copied on.**

7 Q Okay. And do you know the time frame?

8 **A I believe the time frame existed**  
9 **between late 2016 to the middle of 2018 -- let**  
10 **me -- hold on one second. Let me just -- let me**  
11 **just -- when we're talking about a window that**  
12 **big, it sounds like a bad idea to speculate. So**  
13 **let me get exact.**

14 **So December 2017 through the middle of**  
15 **2018.**

16 Q Okay. Is whatever you're reviewing on  
17 your phone, does that give you all the dates of  
18 the communications?

19 **A So I'm looking at this, and I will**  
20 **produce -- I'm going to produce.**

21 **A John, I'm going to send to my counsel,**  
22 **this email called disputes and phone conference**

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<p>201</p> <p>1 formally requested to Mr. Sussman. It provided</p> <p>2 the basis of the emails that contained the 47</p> <p>3 some-odd requests. This is sort of that initial</p> <p>4 request.</p> <p>5 So I'll send this because it does have</p> <p>6 a lot of dates and it may be helpful.</p> <p>7 Q Did Mr. Sussman advise that he would</p> <p>8 consider any disputes or appeals on a case-by-case</p> <p>9 basis if adequate documentation was provided?</p> <p>10 A We were told that he would consider on</p> <p>11 a case-by-case basis. He was extremely consistent</p> <p>12 in his no.</p> <p>13 Q Right. And Mr. Sussman was asking both</p> <p>14 for the grounds of the appeal and then the facts</p> <p>15 that supported those grounds, correct?</p> <p>16 A I know that Mr. Sussman was having a</p> <p>17 conversation with an attorney about those -- the</p> <p>18 attorney that was making those arguments. I don't</p> <p>19 know what questions he asked her.</p> <p>20 Q You don't know through reviewing the</p> <p>21 emails that Mr. Sussman was asking for the grounds</p> <p>22 as well as the facts that supported the grounds</p>	<p>203</p> <p>1 explained based on what the issue was that we were</p> <p>2 attempting to resolve through the dispute process.</p> <p>3 I wasn't a party to any of those</p> <p>4 communications directly, so I'm only referencing</p> <p>5 based on my reviewing email communications. So I</p> <p>6 apologize I can't be more thorough.</p> <p>7 Q Right.</p> <p>8 A But my understanding is that -- that we</p> <p>9 provided an explanation and that we were told that</p> <p>10 we could not contest them.</p> <p>11 Q Isn't it true that some of those emails</p> <p>12 only provided, for example, an example of an</p> <p>13 appeal, perhaps, but not setting forth any</p> <p>14 specific grounds for an RLI bond or the facts that</p> <p>15 supported an RLI bond appeal or dispute?</p> <p>16 A Well, I'm aware of an email</p> <p>17 communication where Mr. Sussman requested an</p> <p>18 appeal was -- received one and then -- I need to</p> <p>19 see that email to fully understand the</p> <p>20 communication that you're talking about. My</p> <p>21 understanding is that a sufficient basis for</p> <p>22 the -- the seeking to contest the bonds was</p>
<p>202</p> <p>1 for any appeals?</p> <p>2 A I know that he had asked for the</p> <p>3 grounds and I know that that was provided. Any</p> <p>4 follow-up conversations they may have had I don't</p> <p>5 know about. But based on the emails I can</p> <p>6 certainly review that, yes.</p> <p>7 Q And the emails that you reviewed, did</p> <p>8 the emails provide both the grounds for the appeal</p> <p>9 and the facts to substantiate those grounds for</p> <p>10 all 47 of the appeals?</p> <p>11 A Can you repeat that, I'm sorry?</p> <p>12 Q Of the emails that you reviewed, I</p> <p>13 think you said there were six or seven perhaps.</p> <p>14 A Uh-huh.</p> <p>15 Q Did those emails set forth the</p> <p>16 grounds --</p> <p>17 A Some of the grounds.</p> <p>18 Q -- for all 47 appeals and the facts</p> <p>19 that supported those grounds?</p> <p>20 A So I was copied on some of those</p> <p>21 communications, not all of them. My understanding</p> <p>22 is that each of those -- each of those cases was</p>	<p>204</p> <p>1 provided.</p> <p>2 Q You mean the grounds?</p> <p>3 A Yes, that basis based upon the legal</p> <p>4 conclusions of the attorney that's filing the</p> <p>5 appeal, right? So I know that those</p> <p>6 communications happened. I wasn't a party to</p> <p>7 those communications, so I can't repeat them off</p> <p>8 the top of my head obviously.</p> <p>9 Q Okay. And you can't say, sitting here,</p> <p>10 how many of those emails -- whether or not those</p> <p>11 emails set forth the grounds and the facts</p> <p>12 supporting the grounds for all 47 of these</p> <p>13 pre-invoice disputes?</p> <p>14 A No, no, no. A case-by-case basis. I</p> <p>15 can say that I'm confident that we provided</p> <p>16 grounds and that I know that RLI never allowed us</p> <p>17 to contest not one. It's also important,</p> <p>18 Ms. Katsantonis, to understand that 47 is the</p> <p>19 number I think that I have identified. We would</p> <p>20 have sought to contest scores more, but</p> <p>21 unfortunately, you know, after being -- it being</p> <p>22 made clear that this was not something that was</p>

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<p>205</p> <p>1 ever going to be allowed, it really has impacted</p> <p>2 our ability to manage this book.</p> <p>3 Q Why do you say -- can the co-obligor</p> <p>4 assert pre-invoice disputes?</p> <p>5 A Unfortunately, no. They require a</p> <p>6 letter of authorization from the surety.</p> <p>7 Q And where are you deriving that</p> <p>8 information, the requirement from? The DHS</p> <p>9 handbook?</p> <p>10 A The DHS handbook and what they tell you</p> <p>11 when you seek. The DHS handbook says you can file</p> <p>12 disputes. It doesn't say you have to have a</p> <p>13 letter from the surety. But when you call the</p> <p>14 bond unit manager and say I'm filing a dispute he</p> <p>15 says send me the letter from the surety. So we</p> <p>16 know that the letter is required.</p> <p>17 Q Does the DHS Handbook specifically</p> <p>18 provide a basis for filing pre-invoice disputes?</p> <p>19 A It doesn't provide a specific basis.</p> <p>20 It gives an indication of what a dispute is.</p> <p>21 Q Right?</p> <p>22 A And there are certain aspects of a</p>	<p>207</p> <p>1 on the testimony or evidence from the attorney</p> <p>2 Juliana?</p> <p>3 A Yeah, as a 30(b)(6) witness, a lot of</p> <p>4 my testimony is based on information that I've</p> <p>5 been able to study and review in anticipation of</p> <p>6 this deposition.</p> <p>7 Q Right. But Juliana, is she a Nexus</p> <p>8 employee?</p> <p>9 A She is not. She's an attorney. She</p> <p>10 operated with us via contract.</p> <p>11 Q What's her law firm?</p> <p>12 A Function via contract. McNutt Law, I</p> <p>13 think it's called.</p> <p>14 MR. SHOREMAN: For the record, the</p> <p>15 documents that are -- the emails that the witness</p> <p>16 just discussed were produced via email to counsel</p> <p>17 for RLI.</p> <p>18 Q With regard to an invoice -- so is one</p> <p>19 type of pre-invoice dispute to obtain a mitigation</p> <p>20 reduction?</p> <p>21 A It can be.</p> <p>22 Q Okay. And that would be for delivery</p>
<p>206</p> <p>1 dispute that can be either pre-, like I'm talking</p> <p>2 about with the breach, or post-invoice.</p> <p>3 Q And what documentation do you have that</p> <p>4 evidences that a pre-invoice dispute will only be</p> <p>5 accepted if a surety letter is provided?</p> <p>6 A My own knowledge.</p> <p>7 Q Based on what?</p> <p>8 A Based on being denied the ability to do</p> <p>9 it because we did not have a letter from RLI</p> <p>10 granting same.</p> <p>11 Q Okay. And where did -- who told you --</p> <p>12 do you have a written correspondence or do you</p> <p>13 have a verbal communication that said you could</p> <p>14 not file a pre-invoice dispute without a letter</p> <p>15 from RLI?</p> <p>16 A I know we have a verbal communication.</p> <p>17 The letter I just forwarded to counsel to produce</p> <p>18 to you sets more fully out from Juliana what the</p> <p>19 communication with ICE was and what the needs are</p> <p>20 from -- from RLI to be able to substantiate the</p> <p>21 dispute. And I'll produce that to you.</p> <p>22 Q All right. So your knowledge is based</p>	<p>208</p> <p>1 within the 30 days?</p> <p>2 A That's correct. Or within the second</p> <p>3 window because there are two windows where you can</p> <p>4 get mitigation at 66 percent and then again at</p> <p>5 33 percent.</p> <p>6 Q And didn't some of RLI invoices get</p> <p>7 mitigated?</p> <p>8 A Oh, sure.</p> <p>9 Q And RLI assisted with that process?</p> <p>10 A Well, in those instances we had -- so</p> <p>11 understand in those instances you've got an</p> <p>12 individual who is a notice to deliver, right?</p> <p>13 They don't come in. And then in between the</p> <p>14 notice to deliver and the breach they go in, okay?</p> <p>15 So the ICE officer is acutely aware that they're</p> <p>16 there. So that kind of dispute's pretty easy. We</p> <p>17 don't really need RLI to help us with that because</p> <p>18 the immigrant's literally in front of the bond</p> <p>19 unit officer saying, hey, I'm here. And so</p> <p>20 typically those will get mitigated based on the</p> <p>21 fact that the person is there and that the</p> <p>22 calendar is what the calendar is, you know.</p>

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<p>209</p> <p>1 Q Hasn't RLI make -- didn't RLI make</p> <p>2 phone calls on behalf of Nexus in order to</p> <p>3 mitigate bonds?</p> <p>4 A It's entirely possible that calls were</p> <p>5 made in those circumstances. I'm not aware of</p> <p>6 them but I certainly would appreciate if they did</p> <p>7 and would expect it.</p> <p>8 Q Right?</p> <p>9 A So that would make sense.</p> <p>10 Q So it wouldn't be a fair statement to</p> <p>11 say that RLI never assisted Nexus in pre-invoice</p> <p>12 disputes?</p> <p>13 A I think it -- I actually do think that</p> <p>14 it is accurate to say that RLI has never assisted</p> <p>15 Nexus in pre-invoice disputes understanding that</p> <p>16 what I'm talking about are not mitigation issues</p> <p>17 based on when a person came in or was produced.</p> <p>18 We're talking about -- and I think I testified to</p> <p>19 this pretty specifically. We're talking about</p> <p>20 instances where there has been a mistake. The</p> <p>21 person's case is continuing, but there's some kind</p> <p>22 of faulty breach or a faulty notice.</p>	<p>211</p> <p>1 Q So you're saying -- it's your testimony</p> <p>2 that there are instances where you provided RLI</p> <p>3 with specific information about an immigrant to</p> <p>4 show that the immigrant was complying with their</p> <p>5 bond obligations but RLI just ignored it?</p> <p>6 A Yes.</p> <p>7 Q And can you tell me specifically what</p> <p>8 those instances were?</p> <p>9 A I can't tell you specifically by</p> <p>10 client, but I will, again, produce the</p> <p>11 communications that were happening between Juliana</p> <p>12 and Ira Sussman and you can read it for yourself.</p> <p>13 Q Okay. So the basis of the statement</p> <p>14 you're making is based on the emails that you'll</p> <p>15 produce?</p> <p>16 A The emails that -- that I will produce</p> <p>17 and communications I have had with Erik Schneider</p> <p>18 and any additional documentation that I will --</p> <p>19 that we have. In other words, I want to get you</p> <p>20 the global list of times that we have asked for</p> <p>21 it. So I know there's 47. I'll get you that.</p> <p>22 But if there's more, I'll get you that too.</p>
<p>210</p> <p>1 Q So you're saying that there's no</p> <p>2 instances with RLI?</p> <p>3 A I'm sorry?</p> <p>4 Q I'm sorry. I did interrupt you and I</p> <p>5 apologize.</p> <p>6 A No, it's our thing. I understand.</p> <p>7 Q Are you saying there's no notices where</p> <p>8 RLI assisted in those cases?</p> <p>9 A I'm not suggesting that RLI didn't</p> <p>10 assist by making phone calls in those cases. I'm</p> <p>11 suggesting that RLI didn't assist in the specific</p> <p>12 subset of cases where we needed to show that a</p> <p>13 person didn't -- you know, didn't miss or is</p> <p>14 continuing to go to court or whatever. In those</p> <p>15 instances where we've asked RLI, look there's a</p> <p>16 breach, the breach is wrong, we want to seek a</p> <p>17 reconsideration with the bond unit officer, we've</p> <p>18 been denied letters in those cases. That's -- and</p> <p>19 consistently to the extent that RLI may have made</p> <p>20 calls about mitigation breaches, well that's great</p> <p>21 and I appreciate that but it's different than what</p> <p>22 I'm talking about.</p>	<p>212</p> <p>1 That --</p> <p>2 Q Did you have an understanding that --</p> <p>3 that under the terms of the indemnity agreement,</p> <p>4 RLI had the unilateral right to determine whether</p> <p>5 to appeal any claim?</p> <p>6 A I believe under the indemnity agreement</p> <p>7 RLI has the unilateral right to determine RLI's</p> <p>8 appeal decisions. I believe that the co-obligor</p> <p>9 has independent rights of appeal just as he has</p> <p>10 joint and several liability.</p> <p>11 Q With regard to invoices, by the terms</p> <p>12 of the invoice is payment due and payable upon its</p> <p>13 receipt?</p> <p>14 A Upon the receipt of the invoice?</p> <p>15 Q Uh-huh.</p> <p>16 A Do you have a document that you want me</p> <p>17 to look at that you're talking about? I mean, I</p> <p>18 just want to make sure I know what you're talking</p> <p>19 about. Are you talking about any invoice? Are</p> <p>20 you talking about a specific invoice? Are you</p> <p>21 talking about a specific client or a specific</p> <p>22 case?</p>

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<p>213</p> <p>1 Q I'm just talking about invoices issued</p> <p>2 by DHS based on a bond breach.</p> <p>3 A So an invoice, once a breach -- a</p> <p>4 breach occurs, there's a final determination of</p> <p>5 the breach, the appeal window eclipses. There's</p> <p>6 an invoice. At that point in time the invoice is</p> <p>7 due.</p> <p>8 Now, we have, as a matter of function,</p> <p>9 had several invoices that were rescinded in that</p> <p>10 process because we've continued to seek relief for</p> <p>11 the client or the client perhaps has a motion to</p> <p>12 reopen or something like that that comes through</p> <p>13 during that dependency at that time. A lot of</p> <p>14 times when we're waiting for that 120th day when</p> <p>15 we have an invoice, it's because we know that that</p> <p>16 client has a motion to reopen.</p> <p>17 Q But that's not what the invoice says on</p> <p>18 its face, right? Doesn't the invoice on its face</p> <p>19 say that it is due and payable on receipt?</p> <p>20 A Sure. And I have a duty to either</p> <p>21 indemnify you or exonerate you, right? I</p> <p>22 indemnify you. You could pay something and then I</p>	<p>215</p> <p>1 Q Okay -- but.</p> <p>2 A -- because again I think the court</p> <p>3 has -- it will be interesting to see what the</p> <p>4 court considers when they see RLI's behavior,</p> <p>5 right? I think that's going to be important.</p> <p>6 Q And RLI's behavior with regard to what?</p> <p>7 A With regard, for example, to the bond</p> <p>8 that we raised on Friday where you show that it</p> <p>9 was canceled in the production that you made to us</p> <p>10 in discovery but we paid it. You accepted our</p> <p>11 check, you cashed it and you never refunded it and</p> <p>12 then you send us back an email saying no, we</p> <p>13 really did pay it. Well, did you pay it or is it</p> <p>14 canceled. Your records say it was canceled. I</p> <p>15 don't have the cancellation.</p> <p>16 Q Did you produce to RLI records to</p> <p>17 support your contention?</p> <p>18 A RLI receives the records and produces</p> <p>19 them to us.</p> <p>20 Q Is that a no? You have not produced to</p> <p>21 RLI --</p> <p>22 A I have asked you for the cancellation.</p>
<p>214</p> <p>1 would pay it back, or I pay for you. We pay for</p> <p>2 you. Every single time a breach comes up and</p> <p>3 there's an invoice issued, we pay it.</p> <p>4 Q Well, you don't --</p> <p>5 A Every single time.</p> <p>6 Q Well, you don't pay it on its due date,</p> <p>7 right? The invoice by its face say it's due and</p> <p>8 payable on receipt, right?</p> <p>9 A I understand that.</p> <p>10 Q Do you want to see that?</p> <p>11 A No, I hear you. But we pay all of our</p> <p>12 invoices.</p> <p>13 Q You don't pay them upon receipt.</p> <p>14 A Point me to an invoice that's</p> <p>15 outstanding.</p> <p>16 Q Mr. Donovan, we've been through</p> <p>17 extensive litigation, right?</p> <p>18 A I know we have.</p> <p>19 Q And we've had preliminary injunctions</p> <p>20 in order to require Nexus to pay, right?</p> <p>21 A Which is -- which is really unfortunate</p> <p>22 because again --</p>	<p>216</p> <p>1 Q Didn't RLI provide you with</p> <p>2 documentation in response to your question</p> <p>3 yesterday?</p> <p>4 A Not the cancellation or an explanation</p> <p>5 of why that bond was listed canceled?</p> <p>6 Q Mr. Donovan, did --</p> <p>7 A You're interrupting me.</p> <p>8 Q That's okay. I don't care.</p> <p>9 Let's just mark this.</p> <p>10 (Donovan Exhibit 10 marked for</p> <p>11 identification and attached to the transcript.)</p> <p>12 Q Okay. This is a copy of an invoice</p> <p>13 receipt for bond breach; is that correct?</p> <p>14 MR. SHOREMAN: 10. Do I have 10?</p> <p>15 MS. KATSANTONIS: Did you get a copy?</p> <p>16 MR. SHOREMAN: No.</p> <p>17 A I think that's correct.</p> <p>18 Q And is this consistent with all of the</p> <p>19 invoices typically received for bond breaches?</p> <p>20 A No.</p> <p>21 Q This is not a typical invoice?</p> <p>22 A Well, all the invoices are different.</p>

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<p>217</p> <p>1 <b>The dollars amounts will be different, the names</b></p> <p>2 <b>would be different, all that.</b></p> <p>3 Q I mean the form.</p> <p>4 A <b>Yes, the form would be the same.</b></p> <p>5 Q Okay. So with regard to the form,</p> <p>6 looking at the second page, payment due, doesn't</p> <p>7 the invoice provide that the bill is due and</p> <p>8 payable on receipt?</p> <p>9 A <b>No. It says 15 October 2016.</b></p> <p>10 Q I'm looking at the second page, payment</p> <p>11 due. Important information regarding this</p> <p>12 invoice.</p> <p>13 A <b>All right. But it also has a due date.</b></p> <p>14 Q Right. I'm looking at the terms on</p> <p>15 important information regarding this invoice.</p> <p>16 A <b>Right, but I'm looking at the actual</b></p> <p>17 <b>invoice and it has a due date on it.</b></p> <p>18 Q Okay. Let's look at the second page.</p> <p>19 A <b>All right, but do you see the due date</b></p> <p>20 <b>on the invoice, there's a due date on the invoice.</b></p> <p>21 Q There's an explanation here --</p> <p>22 A <b>On the second page there is a list of</b></p>	<p>219</p> <p>1 <b>the reverse side within the time specified on the</b></p> <p>2 <b>invoice will result in additional charges.</b></p> <p>3 <b>Ms. Katsantonis, the line you're</b></p> <p>4 <b>quoting literally says follow the date from the</b></p> <p>5 <b>invoice. And if you look at the invoice,</b></p> <p>6 <b>Ms. Katsantonis, there is a date of issuance on</b></p> <p>7 <b>the invoice and a due date on the invoice. And</b></p> <p>8 <b>they're not the same date.</b></p> <p>9 Q Isn't the payment terms saying that</p> <p>10 penalties will be due if you don't pay within the</p> <p>11 30 days but that the bill is due and payable upon</p> <p>12 receipt?</p> <p>13 MR. SHOREMAN: The document speaks for</p> <p>14 itself.</p> <p>15 A <b>Yeah, I think it very clearly says that</b></p> <p>16 <b>you're supposed to comply with the dates on the</b></p> <p>17 <b>invoice.</b></p> <p>18 Q Well, you don't contest that the</p> <p>19 invoice says the bill is due and payable on</p> <p>20 receipt, right? That language is right there,</p> <p>21 first line?</p> <p>22 MR. SHOREMAN: Ms. Katsantonis.</p>
<p>218</p> <p>1 <b>terms.</b></p> <p>2 Q Right. And it explains those terms,</p> <p>3 right?</p> <p>4 A <b>But what I will say is that this is --</b></p> <p>5 <b>this is very specific. This is a due date on the</b></p> <p>6 <b>invoice and this is a general provision, right?</b></p> <p>7 <b>Like specific general. This says that there's a</b></p> <p>8 <b>due date. So there's an invoice date of 15th</b></p> <p>9 <b>September and a due date of 15th October.</b></p> <p>10 Q Okay. That's great. Now looking at</p> <p>11 the next page?</p> <p>12 A <b>Uh-huh.</b></p> <p>13 Q With regard to important information</p> <p>14 regarding this invoice, looking at payment due.</p> <p>15 Doesn't the invoice provide that the bill is due</p> <p>16 and payable on receipt, correct?</p> <p>17 MR. SHOREMAN: No, it doesn't.</p> <p>18 A <b>It also says failure to submit the</b></p> <p>19 <b>amount shown --</b></p> <p>20 MR. SHOREMAN: Why are you only reading</p> <p>21 the first sentence?</p> <p>22 A <b>Failure to submit the amount shown on</b></p>	<p>220</p> <p>1 Q Is that correct?</p> <p>2 MR. SHOREMAN: It speaks. We do</p> <p>3 contest that because the following sentence says</p> <p>4 it must be paid within the due date specified on</p> <p>5 the invoice.</p> <p>6 MS. KATSANTONIS: Mr. Shoreman.</p> <p>7 MR. SHOREMAN: Why are we arguing about</p> <p>8 something as silly as this?</p> <p>9 MS. KATSANTONIS: Mr. Shoreman, let's</p> <p>10 get Mr. Donovan's testimony because your testimony</p> <p>11 isn't even accurate.</p> <p>12 MR. SHOREMAN: I apologize, but it is</p> <p>13 so obvious that a cat could testify to it.</p> <p>14 THE WITNESS: A cat? The cat thing was</p> <p>15 funny. I'm sorry. Just thinking like a meow or</p> <p>16 something, I don't know. Weird.</p> <p>17 Q So you agree, Mr. Donovan, the first</p> <p>18 sentence says that the bill is due on receipt,</p> <p>19 right?</p> <p>20 A <b>I would agree that the first sentence</b></p> <p>21 <b>says this bill is due and payable on receipt.</b></p> <p>22 Q Right. And that the second sentence</p>

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<p>1 says failure to submit the amount shown within the</p> <p>2 time specified on the invoice will result in</p> <p>3 additional charges?</p> <p>4 <b>A Yes, I see that.</b></p> <p>5 Q Okay. So did you understand that if</p> <p>6 you didn't pay within 30 days, additional charges</p> <p>7 would be assessed?</p> <p>8 <b>A Right, see I think this is part of the</b></p> <p>9 <b>confusion though, Ms. Katsantonis, because like</b></p> <p>10 <b>what it's saying is that this bill is due and</b></p> <p>11 <b>payable upon receipt.</b></p> <p>12 Q All right.</p> <p>13 <b>A This is important and it may help edify</b></p> <p>14 <b>you to certain aspects of your case.</b></p> <p>15 <b>The breach is not payable upon receipt,</b></p> <p>16 <b>right? As we have articulated, a breach doesn't</b></p> <p>17 <b>become due and payable until it's a final claim,</b></p> <p>18 <b>right? So what this invoice --</b></p> <p>19 Q That's --</p> <p>20 <b>A I'm sorry. No, I really want you to</b></p> <p>21 <b>understand because if you listen to me you're</b></p> <p>22 <b>going to understand this. This says that now you</b></p>	<p>1 <b>program, is a threat if an invoice isn't paid and</b></p> <p>2 <b>it's one of the reasons why we're proud to pay our</b></p> <p>3 <b>invoices every single time.</b></p> <p>4 Q Well, you don't pay your invoices on</p> <p>5 the date you receive an invoice, right?</p> <p>6 <b>A No, we do not.</b></p> <p>7 Q And you don't pay an invoice within 30</p> <p>8 days of receipt, do you?</p> <p>9 <b>A Not always.</b></p> <p>10 Q Most of time you don't, right?</p> <p>11 <b>A Not always.</b></p> <p>12 Q Well, what does "not always" mean? Do</p> <p>13 you always pay them within 30 days?</p> <p>14 <b>A I don't know. This is not -- I mean,</b></p> <p>15 <b>we don't have, as I told you, we don't track when</b></p> <p>16 <b>we pay them as long as we pay them when they are</b></p> <p>17 <b>ultimately due.</b></p> <p>18 Q Well, isn't --</p> <p>19 <b>A As you have articulated, and I don't</b></p> <p>20 <b>mean to raise my voice, Ms. Katsantonis, I just</b></p> <p>21 <b>want to make sure I get a chance to finish my</b></p> <p>22 <b>answer.</b></p>
<p>1 <b>can pay this. Because when it was a breach you</b></p> <p>2 <b>couldn't pay it, right, until it's an invoice you</b></p> <p>3 <b>can't pay it. So it's saying you can pay it but</b></p> <p>4 <b>you must pay it by the due date. That's what it</b></p> <p>5 <b>says.</b></p> <p>6 MR. SHOREMAN: Meow.</p> <p>7 Q And so you're not --</p> <p>8 THE WITNESS: The meow thing is just</p> <p>9 hilarious. Cats are such weird creatures anyway.</p> <p>10 MR. SHOREMAN: I love cats.</p> <p>11 THE WITNESS: I've always been a dog</p> <p>12 person myself.</p> <p>13 MR. SHOREMAN: I don't even own a dog.</p> <p>14 THE WITNESS: Cats always feel like you</p> <p>15 don't really -- you don't really own a cat, the</p> <p>16 cat kind of owns you.</p> <p>17 <b>Q You understood, Mr. Donovan, Nexus</b></p> <p>18 <b>understood that the consequences of a failure to</b></p> <p>19 <b>pay could result in, among other things, the</b></p> <p>20 <b>referral of the bonding company, the Department of</b></p> <p>21 <b>Treasury or the Department of Justice?</b></p> <p>22 <b>A I understand the Treasury, that offset</b></p>	<p>1 As you have indicated, we have been</p> <p>2 under injunctive relief orders in this case,</p> <p>3 right?</p> <p>4 Q It's --</p> <p>5 <b>A But we have made those payments and we</b></p> <p>6 <b>will continue to make payments as we are required.</b></p> <p>7 Q Mr. Donovan, doesn't the invoice on its</p> <p>8 face say when it's due.</p> <p>9 <b>A I think on the invoice has a due date,</b></p> <p>10 <b>yes.</b></p> <p>11 Q Right. And when you talk about when an</p> <p>12 invoice is due, you're creating a different due</p> <p>13 date than what's on the invoice, right?</p> <p>14 <b>A I'm talking about the referral to</b></p> <p>15 <b>Treasury which has been a focus of your client in</b></p> <p>16 <b>litigation.</b></p> <p>17 Q No, when you say when an invoice is</p> <p>18 due, right, you're creating a due date that's</p> <p>19 different than what's on the face of this</p> <p>20 document, right?</p> <p>21 <b>A I think I'm referring to the date set</b></p> <p>22 <b>by the order of preliminary injunction. I think</b></p>

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<p>225</p> <p>1 that may be our confusion. So we have an order</p> <p>2 for preliminary injunction --</p> <p>3 Q Wait a minute?</p> <p>4 A Ms. Katsantonis, but you're</p> <p>5 interrupting me. We have an order for preliminary</p> <p>6 injunction in this case that says we have to make</p> <p>7 payments by the 120th day.</p> <p>8 Q I'm not talking about the preliminary</p> <p>9 injunction.</p> <p>10 A Well, I am, ma'am. With all due</p> <p>11 respect and you're continuing to interrupt me. We</p> <p>12 have an order from a chief judge in a federal</p> <p>13 district that says this is what it is. So when I</p> <p>14 refer to that, that's what I'm talking about.</p> <p>15 Q When do you believe an invoice is due</p> <p>16 not with regard to this case and the order of</p> <p>17 injunction. What is your understanding of when an</p> <p>18 invoice is due that's been issued by the</p> <p>19 Department of Homeland Security?</p> <p>20 A Barring -- yeah, it would be on the due</p> <p>21 date of the invoice. It's rather straightforward.</p> <p>22 It's on the front of the invoice.</p>	<p>227</p> <p>1 so that their bond breach can be canceled and they</p> <p>2 can continue on. There are many, many, incidents</p> <p>3 where our risk management folks are active --</p> <p>4 Ms. Katsantonis it's really important for you to</p> <p>5 understand that even today, right now as we're</p> <p>6 talking, we have dozens of risk management</p> <p>7 professionals in the field working with Libre</p> <p>8 program participants. This is a -- it is a</p> <p>9 significant undertaking. And we focus on getting</p> <p>10 these people to meet and fulfill their</p> <p>11 obligations.</p> <p>12 Q Didn't you have to get a payment</p> <p>13 schedule with the Department of Homeland Security</p> <p>14 because you couldn't make your payments, not even</p> <p>15 on the due date, but months later?</p> <p>16 A [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 Q [REDACTED]</p> <p>21 with the [REDACTED]</p> <p>22 A We are not.</p>
<p>226</p> <p>1 Q Okay. So your understanding is that an</p> <p>2 invoice is due within 30 days or on the due date?</p> <p>3 A On the due date of the invoice, right.</p> <p>4 Q Okay. And how many bonds have you paid</p> <p>5 on the due date of an invoice?</p> <p>6 A We do -- I don't have that total</p> <p>7 number, and it's not something that we keep track</p> <p>8 of. In other words, it's not -- it's not a KPI</p> <p>9 that we track, whether it was paid on that date,</p> <p>10 before that date or after that date.</p> <p>11 Q Can you estimate how many of the bonds</p> <p>12 that you've paid have you paid on the -- what's</p> <p>13 your definition of the due date on the face of the</p> <p>14 invoice?</p> <p>15 A I can estimate but not under oath</p> <p>16 because --</p> <p>17 Q Well, how many do you think?</p> <p>18 A -- that's an estimation I couldn't</p> <p>19 possibly be swearing to it. I would say maybe</p> <p>20 half. I think in more than half. Half or more</p> <p>21 than half the cases we have worked in that invoice</p> <p>22 period to try to get either relief for the client</p>	<p>228</p> <p>1 Q Okay. And isn't it true that most of</p> <p>2 the bond payments that you've made over the last,</p> <p>3 let's start with year, have been at or around 120</p> <p>4 days after an invoice was issued?</p> <p>5 A It's certainly true with RLI bonds,</p> <p>6 yes. I don't know the -- I'm going to have to</p> <p>7 look at the number, but I would say that more</p> <p>8 often than not we err on the side of caution to</p> <p>9 try to bring the person into compliance before we</p> <p>10 pay the bond and ultimately abridge their rights.</p> <p>11 Q And the same thing with 2019?</p> <p>12 A I would say that's true, sure.</p> <p>13 Q And what about 2018? Same?</p> <p>14 A I think so. You have to understand,</p> <p>15 Ms. Katsantonis, we focus on helping the</p> <p>16 individual and helping the individual means trying</p> <p>17 to bring them out of the shadows and into</p> <p>18 compliance. So we're going to take whatever time</p> <p>19 we can to be able to do that.</p> <p>20 Q So then your estimate would be</p> <p>21 inaccurate that it's not maybe half of the bonds</p> <p>22 that you've paid within 30 days, right?</p>

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<p>229</p> <p>1 A No, I don't think so because I think</p> <p>2 historically it was probably more likely that we</p> <p>3 were paying earlier before. So what we have seen</p> <p>4 is a larger number of breaches, a larger number of</p> <p>5 people that are being breached for inappropriate</p> <p>6 reasons, a larger number of rescinding breaches.</p> <p>7 And that's just a reflection of the federal</p> <p>8 government's hyperactive approach toward</p> <p>9 deportation.</p> <p>10 Q Well, what year was it that you entered</p> <p>11 into the payment schedule with DHS?</p> <p>12 A I believe it was 2017.</p> <p>13 Q Right. So in 2017 you weren't paying</p> <p>14 within 30 days.</p> <p>15 A In 2017 was the -- was a full year into</p> <p>16 the Trump administration and into the issues</p> <p>17 involving the extrapolation of increased incorrect</p> <p>18 breaches. So I would say yeah we were dealing</p> <p>19 with that 2016, 2017. But in 2014, 2015, we</p> <p>20 weren't.</p> <p>21 Q Okay. So for 2017, '18, and '19 it's</p> <p>22 true that for most bond breaches you were not</p>	<p>231</p> <p>1 A I believe we were on a repayment</p> <p>2 schedule for a year but I'm not a hundred percent</p> <p>3 sure. So again I would have to review documents</p> <p>4 to answer that question, Ms. Katsantonis.</p> <p>5 Q All right. And at 30,000 a day, even</p> <p>6 at five days a week, it would be 150,000 a week,</p> <p>7 at least 600,000 a month, and over 7 million in a</p> <p>8 year, is that correct?</p> <p>9 A Yeah. And we're still here paying our</p> <p>10 obligations. Kind of makes the underlying</p> <p>11 complaint seem silly, right?</p> <p>12 Q All right. So in 2018 at least on this</p> <p>13 payment schedule you probably paid over 7 million</p> <p>14 in bonds breach payments?</p> <p>15 A We've paid over \$11 million in bond</p> <p>16 breach payments, Ms. Katsantonis, so that does</p> <p>17 sound consistent.</p> <p>18 Q Okay. And with regard to the invoice,</p> <p>19 with regard to disputes, the invoice provides</p> <p>20 unless a written request disputing the debt is</p> <p>21 sent to the office indicated above within 30 days</p> <p>22 of receipt of the invoice, the debt will be</p>
<p>230</p> <p>1 paying within 30 days, correct?</p> <p>2 A That's right. In the -- what I would</p> <p>3 call the era of Donald Trump, we have tried to</p> <p>4 give people as many opportunities as possible to</p> <p>5 make things right and I'm happy to report many</p> <p>6 people are able to do that. There are lives that</p> <p>7 we've saved as a result of that.</p> <p>8 Q In 2018, starting in March, you were</p> <p>9 paying approximately 30,000 a day in late bond</p> <p>10 breach payments on a repayment schedule with ICE;</p> <p>11 is that correct?</p> <p>12 A That's correct.</p> <p>13 Q And for how many months did you</p> <p>14 continue on this repayment schedule?</p> <p>15 A I'd have to review the documents.</p> <p>16 Q You don't know how long you were on --</p> <p>17 A I don't remember. I don't know how,</p> <p>18 without reviewing documents I'm happy to review</p> <p>19 documents, but I would have to review documents to</p> <p>20 determine that.</p> <p>21 Q Were you on a repayment schedule for at</p> <p>22 least a year?</p>	<p>232</p> <p>1 considered valid and due in full; is that correct?</p> <p>2 A That's correct. I believe that is the</p> <p>3 representation.</p> <p>4 Q And in fact the --</p> <p>5 MR. WILLIAMS: Are we taking a break?</p> <p>6 MS. KATSANTONIS: No.</p> <p>7 MR. SHOREMAN: No, we're still on.</p> <p>8 Q So how many written disputes has Nexus</p> <p>9 submitted in writing to DHS within 30 days of the</p> <p>10 invoice date for Nexus bonds? And when I say</p> <p>11 Nexus bonds --</p> <p>12 A Global, right?</p> <p>13 Q Yeah. When I say Nexus bonds, just to</p> <p>14 be clear on the record, we're talking about bonds</p> <p>15 for which Nexus --</p> <p>16 A Secured.</p> <p>17 Q Yep.</p> <p>18 A Got it. You and I are speaking the</p> <p>19 same language in that regard, Ms. Katsantonis, and</p> <p>20 I will get that for you, okay? I will add that to</p> <p>21 my bucket list of break items.</p> <p>22 Q And then the same for RLI bonds as a</p>

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<p>1 subset of that.</p> <p>2 <b>A Right. I'm accumulating a lot of break</b></p> <p>3 <b>work. We're going to have to start thinking about</b></p> <p>4 <b>taking that break at some point so I can get you</b></p> <p>5 <b>these answers.</b></p> <p>6 Q All right. I've got a couple more</p> <p>7 questions here on the disputes.</p> <p>8 <b>A It's your deposition, Ms. Katsantonis.</b></p> <p>9 Q How many RLI bond breach invoices has</p> <p>10 DHS reduced due to delivery of a bond principal</p> <p>11 within 30, 60, or 90 days of delivery date set</p> <p>12 forth in the notice to deliver?</p> <p>13 <b>A Universal?</b></p> <p>14 Q Let's do RLI bond breaches.</p> <p>15 <b>A Okay. I'm going to get both just</b></p> <p>16 <b>because I know you're going to ask me and I'll get</b></p> <p>17 <b>that at the break as well. I'll review documents</b></p> <p>18 <b>that should be able to answer that question.</b></p> <p>19 Q And then along the same lines, how many</p> <p>20 RLI bond breach --</p> <p>21 <b>A You're just giving me homework now,</b></p> <p>22 <b>aren't you?</b></p>	<p>233</p> <p>1 of what you need?</p> <p>2 <b>A Yes. You let me know when you want me</b></p> <p>3 <b>to go. Once you feel like you're at a good place,</b></p> <p>4 <b>then we'll break and I'll get this stuff for you,</b></p> <p>5 <b>Ms. Katsantonis, okay?</b></p> <p>6 Q Sure. Thank you.</p> <p>7 <b>A You're welcome.</b></p> <p>8 Q You state in paragraph 42 of your</p> <p>9 amended complaint that the purpose of an</p> <p>10 immigration bond is to secure the principal's</p> <p>11 guarantee that he or she will appear for all</p> <p>12 hearings and meetings that are required by the</p> <p>13 United States so that he or she can be released</p> <p>14 from U.S. Government custody and detention during</p> <p>15 the year's long immigration process. Is that an</p> <p>16 accurate statement?</p> <p>17 <b>A That's correct. The immigrant does</b></p> <p>18 <b>have to appear for meetings and hearings, et</b></p> <p>19 <b>cetera, as dictated by the Department of Homeland</b></p> <p>20 <b>Security and the Department of Justice.</b></p> <p>21 Q And you agree that's the purpose of the</p> <p>22 bond is to secure the principal's guarantee?</p>
<p>234</p> <p>1 Q These are the questions we wanted to</p> <p>2 ask. I think it's in the notice.</p> <p>3 How many RLI bond breach invoices has</p> <p>4 DHS reduced for any other reason, rather than just</p> <p>5 delivery of the person?</p> <p>6 <b>A And that doesn't -- you're not talking</b></p> <p>7 <b>about reduced to zero, you're talking about</b></p> <p>8 <b>partially reduced, right?</b></p> <p>9 Q Right. Any form of mitigation.</p> <p>10 <b>A I'm pretty sure that's a zero, but I'll</b></p> <p>11 <b>find out for you.</b></p> <p>12 THE VIDEOGRAPHER: Where you have your</p> <p>13 phone, can you move it?</p> <p>14 THE WITNESS: For sure, yeah. Is that</p> <p>15 enough?</p> <p>16 THE VIDEOGRAPHER: That's good.</p> <p>17 MR. WILLIAMS: 3 hours and 38 minutes.</p> <p>18 MS. KATSANTONIS: How many?</p> <p>19 MR. WILLIAMS: 3 hours and 38 minutes.</p> <p>20 <b>A We're more than halfway done. Unless</b></p> <p>21 <b>you cut early then we're more than halfway done.</b></p> <p>22 MR. SHOREMAN: Okay. You've got a list</p>	<p>235</p> <p>1 <b>A Vis-à-vis the immigrant, yes,</b></p> <p>2 <b>absolutely. The whole purpose of the bond is to</b></p> <p>3 <b>ensure that they appear vis-à-vis the indemnitor</b></p> <p>4 <b>and the obligors, it's appear or pay, right? I</b></p> <p>5 <b>mean, they either appear or they pay. In other</b></p> <p>6 <b>words, the immigrant doesn't owe the United States</b></p> <p>7 <b>Government \$20,000 if the bond was posted by a</b></p> <p>8 <b>surety, right? So they're going to collect that</b></p> <p>9 <b>money from the surety and issue a warrant for the</b></p> <p>10 <b>immigrant. The immigrant's focus is to appear;</b></p> <p>11 <b>the surety's focus is to pay if they don't appear.</b></p> <p>12 Q If an immigrant's not using Nexus'</p> <p>13 services, can't they post a hundred percent of the</p> <p>14 bond amount?</p> <p>15 <b>A They can. They can post it in real --</b></p> <p>16 <b>real assets to the United States.</b></p> <p>17 Q Right. But they're still required to</p> <p>18 appear and go to their hearings, correct?</p> <p>19 <b>A Well, so no. An immigrant in detention</b></p> <p>20 <b>is never going to pay their bond in cash, for what</b></p> <p>21 <b>are obvious reasons. They're going to have a</b></p> <p>22 <b>third-party surety.</b></p>

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<p>237</p> <p>1 Q I'm talking about doesn't the law 2 require, isn't it that an immigrant can post funds 3 for a full amount of its bond or some sort of 4 security, for full amount of its bond, and they're 5 still required to appear for their hearings, 6 right?</p> <p>7 A Well, his or her. I don't want to use 8 the word it.</p> <p>9 Q Sorry. Did I say?</p> <p>10 A I know you didn't intend that. You 11 threw me off with the it. I'm like, what's she 12 saying. Can you repeat the question, Vivian, I'm 13 so sorry. I was so offended I was like what are 14 you talking about.</p> <p>15 Q John got me so distracted about cat 16 talk. I thought he was a dog person but now I'm 17 very distracted.</p> <p>18 A I just want to point out instead of 19 responding really nasty and getting offended, I 20 gut-checked myself and asked first so.</p> <p>21 I will appreciate that, you weren't 22 mean about it.</p>	<p>239</p> <p>1 Q They don't pay, they just forfeit the 2 funds that they provided to the court.</p> <p>3 A Isn't that the same difference?</p> <p>4 Q Well, I'm just saying those funds are 5 forfeited but the immigrant still has to appear?</p> <p>6 A Well, sure. Just like in a surety bond 7 situation.</p> <p>8 Q Sure?</p> <p>9 A The immigrant would ultimately be 10 subject to arrest. But Ms. Katsantonis, your 11 obligations would end upon the payment of that 12 bond, just like the third-party surety mom, 13 brother, dad, co-worker is going to also – their 14 obligations are going to end when they pay that 15 bond.</p> <p>16 Q How many -- do you -- did you monitor, 17 at one point in time each and every RLI bond 18 principal?</p> <p>19 A No. I don't think that we've -- well, 20 can you define what you mean by "monitoring"?</p> <p>21 Q GPS monitoring.</p> <p>22 A No, I don't believe that we've ever</p>
<p>238</p> <p>1 Q Isn't it true that an immigrant without 2 using Nexus' Services, separate and apart, they 3 can post their bond and be released from detention 4 but they're still obligated to make their 5 appearance as required?</p> <p>6 A Well, they're obligated to make their 7 appearances if they're released on bond but no, an 8 immigrant in detention can't post his own bond.</p> <p>9 Q But the family member could post a 10 bond, let's say.</p> <p>11 A A family member standing a surety can 12 post bond for sure.</p> <p>13 Q So, if a family member posts the bond 14 and pays the full penal sum, the immigrant is 15 still required to make its appearances as required 16 by the government, right?</p> <p>17 A Right. And that family member standing 18 a surety either has to ensure they go or pay. The 19 family member is never going to be locked up 20 because they go or thrown in jail because they 21 didn't go. They're either going to have to pay 22 or – the immigrant goes to court or they pay.</p>	<p>240</p> <p>1 monitored all of our RLIs.</p> <p>2 Q How many of RLI -- yeah, how many of 3 RLI bond principals were not fitted with a GPS 4 device?</p> <p>5 A It would be anyone that had a bond less 6 than \$5,000 initially. That amount has raised to 7 \$10,000. But during the life of the RLI program, 8 I believe it would be individuals whose bonds were 9 of a penal value of less than \$5,000.</p> <p>10 Q Okay. And --</p> <p>11 A And I can certainly get you the number 12 of those bonds but I don't have it off the top of 13 my head.</p> <p>14 Q Is every bond principal that gets 15 fitted for a GPS, are they actually monitored as 16 far as through the GPS?</p> <p>17 A So we do different types of monitoring, 18 depending on, you know, the issue with the client. 19 So any client that's affixed with a GPS device 20 does have monitoring that's conducted, meaning 21 they always establish a point when the individual 22 is affixed with the device so that we can ensure</p>

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<p>241</p> <p>1 that the GPS device is actually working.</p> <p>2 Q Uh-huh?</p> <p>3 A But you have to understand --</p> <p>4 Q But --</p> <p>5 A -- that the GPS is not what makes our</p> <p>6 program successful.</p> <p>7 Q I know that and I've heard.</p> <p>8 A It isn't a hugely important part of the</p> <p>9 program.</p> <p>10 Q That's fine. I want to -- and I</p> <p>11 understand all of your -- Nexus' with the program</p> <p>12 and the services are all about.</p> <p>13 A I wish.</p> <p>14 Q So?</p> <p>15 A I wish that were true. I think if you</p> <p>16 did understand them you'd be a huge fan, Vivian.</p> <p>17 Q I do.</p> <p>18 A I do that -- I mean that.</p> <p>19 Q I've never said I'm not.</p> <p>20 A Well, you're suing me so you're</p> <p>21 obviously not that huge a fan.</p> <p>22 Q My client is in litigation with you.</p>	<p>243</p> <p>1 A Any person who had a device affixed to</p> <p>2 them would have had tracking data at some point</p> <p>3 for some period of time, absolutely.</p> <p>4 Q How much --</p> <p>5 A But it's important to understand that</p> <p>6 we are not -- we're not monitoring sex offenders</p> <p>7 on bracelets here. It's not as if we're watching</p> <p>8 to see if people go near school zones or</p> <p>9 something. This is a completely different kind of</p> <p>10 situation. So, you know, the reality is that most</p> <p>11 of the conditions on a bond are very specific to</p> <p>12 showing up, right? So it's -- we utilize the GPS</p> <p>13 as a function of helping clients become stable and</p> <p>14 secure..</p> <p>15 Q Well, let me ask you this.</p> <p>16 A Because stability and security is what</p> <p>17 ultimately leads to compliance.</p> <p>18 Q Let me ask you this: When you have a</p> <p>19 notice to deliver, how many of the RLI bond</p> <p>20 principals did you have on GPS monitoring when you</p> <p>21 received a notice to deliver for them?</p> <p>22 A I don't know that I would have records</p>
<p>242</p> <p>1 A I understand.</p> <p>2 Q So with regard to GPSs?</p> <p>3 A Yes.</p> <p>4 Q My question is, is with the RLI bond</p> <p>5 principal who's actually been fitted with a GPS,</p> <p>6 how many of those bond principals are actually</p> <p>7 monitored, and I don't mean monitored with we're</p> <p>8 calling you to see how you're doing, but I mean</p> <p>9 that the GPS tracking device is being used to</p> <p>10 identify the locational -- the location of the</p> <p>11 principal?</p> <p>12 A Well, they all would have been when the</p> <p>13 device was installed, or at some point upon</p> <p>14 wearing the device. So if your question is how</p> <p>15 many --</p> <p>16 Q Not at the moment it's installed. But</p> <p>17 I'm talking about did you monitor them through GPS</p> <p>18 tracking?</p> <p>19 A What do you mean monitor them?</p> <p>20 Q Did you have a service or did you and</p> <p>21 your office actually -- could, you know, track the</p> <p>22 whereabouts of these principals?</p>	<p>244</p> <p>1 of that. I don't know that those records exist.</p> <p>2 In other words, I'm thinking now of what I would</p> <p>3 review to answer that question. And the -- so can</p> <p>4 you repeat it?</p> <p>5 Q How many of the RLI bond principals</p> <p>6 were you -- did you have GPS monitoring on when</p> <p>7 you received a notice to deliver?</p> <p>8 A The problem is the historical nature of</p> <p>9 this. So I don't -- we didn't -- when we got</p> <p>10 notices to deliver, we never documented whether</p> <p>11 the person was on tracking or wasn't on tracking.</p> <p>12 In other words, it's not like that's something</p> <p>13 that we kept track of. So I just don't know</p> <p>14 that --</p> <p>15 Q So a notice to deliver?</p> <p>16 A -- I would be able to give you a</p> <p>17 snapshot in time but I'm not sure if I can get</p> <p>18 that information. Maybe I can. I'm just not</p> <p>19 thinking about it. I'm not clear.</p> <p>20 Q So it's not part of your practice to</p> <p>21 receive a notice to deliver and then be able to</p> <p>22 check the location or whereabouts of that person</p>

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<p>245</p> <p>1 immediately based on a GPS monitoring?</p> <p>2 A No, very typically by the time a notice</p> <p>3 to deliver is issued in a case, they've been in</p> <p>4 their immigration case for a year or so. Many of</p> <p>5 those instances those people are not going to be</p> <p>6 GPS monitored anymore. The average Nexus Program</p> <p>7 participant is monitored for about eight months,</p> <p>8 right? So what we would not do is look for an</p> <p>9 active tracking point because typically by that</p> <p>10 point we don't have active tracking points. What</p> <p>11 we might look for is historical GPS data to</p> <p>12 determine where the individual might be, not so</p> <p>13 that we can roll up and arrest them, but so that</p> <p>14 we can roll up and make contact with them and help</p> <p>15 them understand why it would be important for them</p> <p>16 to do the right thing.</p> <p>17 Q When did Nexus implement a policy to</p> <p>18 only track immigrants for about eight months?</p> <p>19 A Well, eight months has always been our</p> <p>20 average not our policy, right? We don't have a</p> <p>21 policy that says we only track for eight months.</p> <p>22 But it's very nature being an average there are</p>	<p>247</p> <p>1 don't -- all I have is -- I have a snapshot in</p> <p>2 time I can pull up and show what's on now. I</p> <p>3 didn't keep track of that in a way that I can</p> <p>4 report back.</p> <p>5 Q Has Nexus reviewed whether or not</p> <p>6 there's any correlation between those immigrants</p> <p>7 not on GPS and those immigrants for whom a bond</p> <p>8 breach is issued?</p> <p>9 A Our analysis of our data indicates that</p> <p>10 there is not a significant increase in the breach</p> <p>11 rate for individuals who are not monitored by GPS</p> <p>12 because they have a smaller bond. What I don't</p> <p>13 know, Ms. Katsantonis, is whether that has</p> <p>14 something to do with the fact that they have a</p> <p>15 smaller bond and therefore less risk or whether it</p> <p>16 just doesn't matter. What we have been able to</p> <p>17 deduce from our experiences that the GPS doesn't</p> <p>18 make that much of a difference. Where the GPS</p> <p>19 makes a difference is, again, in stability. It's</p> <p>20 in bringing the person out, and that's an</p> <p>21 incredibly important time because they're trying</p> <p>22 to find work, they're trying to figure out their</p>
<p>246</p> <p>1 going to be some people that track long. So I</p> <p>2 want to make sure that you understand that my</p> <p>3 testimony is not that we only track for eight</p> <p>4 months. The testimony is that on average it's</p> <p>5 eight months. And, honestly, if you keep a GPS</p> <p>6 tracking device on a person for an extended period</p> <p>7 of time, it almost -- it's onerous and it's</p> <p>8 unpleasant and, you know, we're attempting to</p> <p>9 provide, you know, services where we can assist a</p> <p>10 person in bringing them into community. You can't</p> <p>11 bring people into community by making them lepers.</p> <p>12 Q And as of January 2020, according to</p> <p>13 records produced by Buddi, they advised that</p> <p>14 approximately 90 RLI bond principals were on GPS;</p> <p>15 is that accurate?</p> <p>16 A That was accurate at the time.</p> <p>17 Q Okay. So that's 90 out of the</p> <p>18 outstanding, let's say, 1,700-plus bonds, right?</p> <p>19 A Sure.</p> <p>20 Q Okay. And do you know how many were on</p> <p>21 GPS in 2019 or 2018?</p> <p>22 A It would have been more, but, again, I</p>	<p>248</p> <p>1 place in the world and a lot of these folks if</p> <p>2 they're recent arrivals, they're just trying to</p> <p>3 find their place, period.</p> <p>4 Q Did you recently advise Buddi to cease</p> <p>5 monitoring of RLI bonds principals?</p> <p>6 A I did.</p> <p>7 Q When did you do that?</p> <p>8 A I did that in the beginning of</p> <p>9 February, three weeks ago.</p> <p>10 Q And why did you do that?</p> <p>11 A I had -- when I discovered that we had</p> <p>12 90 RLI principals on monitoring, I was horrified</p> <p>13 that we had that many because our RLI program</p> <p>14 ended in 2017 and it's 2020. So that's 90 people</p> <p>15 who have seriously been on the bracelet longer</p> <p>16 than the eight-month average. So in and of itself</p> <p>17 that's a reason to bring those people off. More</p> <p>18 importantly I have significant concerns over what</p> <p>19 RLI might do with data that I have provided to it.</p> <p>20 And I don't have any requirement under the general</p> <p>21 indemnity agreement or the collateral agreement to</p> <p>22 track those people via GPS. And so I made the</p>

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<p>249</p> <p>1 decision to remove that tracking considering the</p> <p>2 fact that these people have been on the program</p> <p>3 for more than three years and it's appropriate.</p> <p>4 It's the appropriate thing to do.</p> <p>5 Q Was cost a factor also?</p> <p>6 A Was cost a factor?</p> <p>7 Q Uh-huh?</p> <p>8 A No. Their safety was a factor and my</p> <p>9 concern of what your client would do to them, that</p> <p>10 was the factor.</p> <p>11 Q With regard to bond breaches we talked</p> <p>12 about earlier, if you recall our first preliminary</p> <p>13 injunction was in November 2018?</p> <p>14 A I recall.</p> <p>15 Q And at that point, RLI was asserting,</p> <p>16 amongst other things, that they had paid</p> <p>17 approximately 72,000 in invoices.</p> <p>18 Do you recall that?</p> <p>19 A I do remember that, yes.</p> <p>20 Q And then since that hearing, RLI has</p> <p>21 also advised you of other bond breach invoices</p> <p>22 that it has paid, correct?</p>	<p>251</p> <p>1 A As is evidenced by the fact that we did</p> <p>2 pay it.</p> <p>3 Q So if RLI wanted to pay within 30 days</p> <p>4 of an invoice, then it has -- it has made payment</p> <p>5 itself, before Nexus, right?</p> <p>6 A Why don't you make note of that,</p> <p>7 Ms. Katsantonis, because you just asked me a</p> <p>8 question to give you all the instances where you</p> <p>9 have abridged the appellate rights of an</p> <p>10 individual and harmed them. If you're referring</p> <p>11 to instances where you paid those early, then you</p> <p>12 have that list, right? If you've paid breaches</p> <p>13 early, knowing that we are trying to help the</p> <p>14 person, you paid them within 30 days and then</p> <p>15 asked us to pay it back, then you've abridged the</p> <p>16 rights of that program participant. That's the</p> <p>17 whole point.</p> <p>18 Q Paid early pursuant to what</p> <p>19 requirement?</p> <p>20 A Not a requirement, Ms. Katsantonis.</p> <p>21 Q The invoice requires it be --</p> <p>22 A Information and understanding.</p>
<p>250</p> <p>1 A What are you referring to?</p> <p>2 Q That you've had to reimburse RLI but</p> <p>3 RLI paid those invoices in the first instance,</p> <p>4 correct?</p> <p>5 A Right. Well, there's an</p> <p>6 indemnification and exoneration provision, right?</p> <p>7 So if RLI paid something and then sent a bill to</p> <p>8 me, of course, I'd pay it. And have every single</p> <p>9 time.</p> <p>10 Q That's what I'm asking though, you know</p> <p>11 for a fact that there's instances where RLI has</p> <p>12 paid bond breach invoices?</p> <p>13 A I believe there are instances where RLI</p> <p>14 chose to pay in advance of Nexus paying, yes.</p> <p>15 Q Okay. So in paragraph 72 of your</p> <p>16 amended counterclaim, you stated RLI has never</p> <p>17 been required to pay an invoice itself and has</p> <p>18 never had cause to use the cash collateral.</p> <p>19 That's not an accurate statement, correct?</p> <p>20 A Sure it is, they didn't have to. We</p> <p>21 would have paid it.</p> <p>22 Q So you're --</p>	<p>252</p> <p>1 Q An invoice requires it be paid within</p> <p>2 30 days, right?</p> <p>3 A But Ms. Katsantonis, if we were able to</p> <p>4 challenge these -- if your client would give us</p> <p>5 the ability to challenge these, we wouldn't have</p> <p>6 the breach rate we have the RLI bonds. This is --</p> <p>7 and it's further problematic that I have had to</p> <p>8 make disclosures to RLI clients that you have</p> <p>9 sought their personal confidential information,</p> <p>10 which of course makes it more likely that the</p> <p>11 people will fail to appear.</p> <p>12 Q Well, I'm trying to get an --</p> <p>13 A Every turn in this litigation --</p> <p>14 Q Mr. Donovan?</p> <p>15 A -- RLI has done things to make this</p> <p>16 harder.</p> <p>17 Q Okay. Mr. Donovan. You said -- I'm</p> <p>18 just trying to get your understanding from either</p> <p>19 what contract document, what DHS book, what</p> <p>20 document do you have to say that paying an invoice</p> <p>21 in 30 days is paying it early?</p> <p>22 A No, Ms. Katsantonis, you and I have</p>

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<p>253</p> <p>1 already discussed this. So you have a right to</p> <p>2 pay an invoice. It's just going to affect the</p> <p>3 individual. I'm telling you that it is and I've</p> <p>4 testified to that. Now, you know, you might have</p> <p>5 a different perspective or may care less than I do</p> <p>6 but that's just a reality.</p> <p>7 Q What specific individual right are you</p> <p>8 saying I've harmed, or RLI has harmed by paying an</p> <p>9 invoice on its due date?</p> <p>10 A If you pay an invoice that could later</p> <p>11 be rescinded and the breach reinstated, once that</p> <p>12 invoice is paid the breach cannot be reinstated</p> <p>13 and the individual would have to be rebonded.</p> <p>14 Q Okay. And you have not provided any</p> <p>15 specific -- you don't know, sitting here today,</p> <p>16 how many instances that's ever happened?</p> <p>17 A Any instance that you paid early it</p> <p>18 could have been happened.</p> <p>19 Q No, that it did happen.</p> <p>20 A Where an individual was -- how would we</p> <p>21 possibly know? In other words, when you pay it,</p> <p>22 the important distinction there, Ms. Katsantonis,</p>	<p>255</p> <p>1 Q Due to the payment of an invoice.</p> <p>2 A Let me -- let me supplement my answer</p> <p>3 at break, okay?</p> <p>4 Q Did you receive -- did you review the</p> <p>5 Department of Homeland Security's response to</p> <p>6 Nexus' subpoena?</p> <p>7 A I may have seen it. Can you put the</p> <p>8 document in front of me so I can review it, if you</p> <p>9 want to ask me questions about it.</p> <p>10 Q Well, my one question --</p> <p>11 A Oh, and, I'm sorry, Ms. Katsantonis,</p> <p>12 you had asked me about the identity of a</p> <p>13 participant who had been harmed. I think I have</p> <p>14 that off the top of my head, if you would like it.</p> <p>15 Q By payment? Sure. By payment of an</p> <p>16 invoice.</p> <p>17 A Juan Valoy.</p> <p>18 Q Okay.</p> <p>19 A By payment of the invoice.</p> <p>20 Q What happened?</p> <p>21 A Well, his bond was taken away. He's</p> <p>22 still in removal proceedings, quasi removal</p>
<p>254</p> <p>1 is that the breach would have been rescinded but</p> <p>2 the breach can't be rescinded when you pay it so</p> <p>3 there's no way for me to calculate that. I would</p> <p>4 just be guessing.</p> <p>5 Q Okay. So you don't know.</p> <p>6 A That's unfortunate. Because those are</p> <p>7 real lives. Those are real people's lives.</p> <p>8 Q I understand.</p> <p>9 A Real lives with real kids and families</p> <p>10 and they matter.</p> <p>11 Q Of course.</p> <p>12 A But unfortunately --</p> <p>13 Q So sitting here today you don't know.</p> <p>14 A Because we weren't given the</p> <p>15 opportunity --</p> <p>16 Q It's yes, no, or I don't know.</p> <p>17 A No, I can't tell you how many lives</p> <p>18 were harmed as a result of that policy.</p> <p>19 Q Okay. And sitting here today you can't</p> <p>20 give me any instance, not one instance in which an</p> <p>21 immigrant's rights were harmed?</p> <p>22 A I didn't -- I don't think I said that.</p>	<p>256</p> <p>1 proceedings. He was an intervenor. You may have</p> <p>2 read his pleadings. If you haven't, they're there</p> <p>3 and you can review them. And it sets forth the</p> <p>4 case involving Mr. Valoy and you'll understand how</p> <p>5 RLI harmed him.</p> <p>6 MR. SHOREMAN: V-A-L-O-Y.</p> <p>7 A Right. I think Judge Urbanski had</p> <p>8 invited the intervenors to file independent</p> <p>9 actions. I'm saddened that Mr. Valoy didn't.</p> <p>10 Ms. Katsantonis, my owe you list is</p> <p>11 getting rather long. So if -- I would like to get</p> <p>12 some of these answers for you so that I don't</p> <p>13 forget anything. So when you're ready and you</p> <p>14 want to dispatch me for five minutes to go get</p> <p>15 some answers I'm more than happy to do that, okay?</p> <p>16 Q All right. Let me just ask you one</p> <p>17 more question and then we can do that.</p> <p>18 A Of course.</p> <p>19 Q And we can certainly mark this.</p> <p>20 (Donovan Exhibit 11 marked for</p> <p>21 identification and attached to the transcript.)</p> <p>22 MR. SHOREMAN: Is this 11?</p>

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<p>257</p> <p>1 THE COURT REPORTER: Yes.</p> <p>2 MR. SHOREMAN: Exhibit 11.</p> <p>3 Q And this was a copy of the Department</p> <p>4 of Homeland Security's response to a subpoena</p> <p>5 issued by Nexus.</p> <p>6 Did you review their summary of</p> <p>7 relevant portions of managing federal receivables?</p> <p>8 A I'd like an opportunity to review. I</p> <p>9 think I have seen this communication but I don't</p> <p>10 believe that I know it well enough to speak to it</p> <p>11 but if you'll give me an opportunity to read it,</p> <p>12 then I'm happy to discuss it.</p> <p>13 Q Sure. And I only have one quick</p> <p>14 question on it if you want to take the time to</p> <p>15 read it, you can. But my quick question, so you</p> <p>16 know --</p> <p>17 A You want to preview your question and</p> <p>18 I'll tell you whether I feel like jumping in head</p> <p>19 first.</p> <p>20 Q Are you aware that the agency has</p> <p>21 advised that it's its policy to send delinquent</p> <p>22 debts to fiscal services as early as possible and</p>	<p>259</p> <p>1 things being held over.</p> <p>2 Q I'm going to do it off the record</p> <p>3 though.</p> <p>4 A You want my answer off the record?</p> <p>5 MR. SHOREMAN: Well, he can't give you</p> <p>6 the answer off the record.</p> <p>7 Q Well, I don't want to take --</p> <p>8 A You're not going to throw documents in</p> <p>9 front of me and I'm going to read them off the</p> <p>10 record so that you get more time and we'll go back</p> <p>11 on. If you want me to read a document in</p> <p>12 preparation for answering a question then we</p> <p>13 should stay on the record and then I will read it</p> <p>14 and answer the question. If you don't want me to</p> <p>15 answer the question then withdraw it.</p> <p>16 MR. SHOREMAN: It's only fair.</p> <p>17 A I'm happy to read it and respond to the</p> <p>18 question.</p> <p>19 MR. SHOREMAN: Do you want him to read</p> <p>20 it or not?</p> <p>21 MS. KATSANTONIS: Let's go off the</p> <p>22 record.</p>
<p>258</p> <p>1 that the agency may refer its debts as early as 61</p> <p>2 days after the delinquency date?</p> <p>3 A I'm going to have to read this,</p> <p>4 Ms. Katsantonis.</p> <p>5 Q All right. And I'm looking at the</p> <p>6 third to the last paragraph on page 2.</p> <p>7 A Got it.</p> <p>8 MS. KATSANTONIS: So why don't we take</p> <p>9 a break and then you can look at that and we</p> <p>10 can --</p> <p>11 A So I'll tell you what. I will do this,</p> <p>12 I will take my break time to -- because you've</p> <p>13 given me a bunch. I have a bunch of questions.</p> <p>14 So I want to take the break time to do that not</p> <p>15 necessarily read this and do that because at some</p> <p>16 point I'll be on break longer than I'll be in</p> <p>17 deposition, right? So I'm going to chase down</p> <p>18 these answers but if you don't mind I want to</p> <p>19 answer your question before we break. Is that</p> <p>20 possible?</p> <p>21 Q Sure.</p> <p>22 A Okay. That way we just don't have two</p>	<p>260</p> <p>1 MR. SHOREMAN: Okay. Let's go off the</p> <p>2 record.</p> <p>3 THE VIDEOGRAPHER: We are going off the</p> <p>4 record at 16:58.</p> <p>5 (Recess taken.)</p> <p>6 THE VIDEOGRAPHER: We are back on the</p> <p>7 record at 17:37.</p> <p>8 BY MS. KATSANTONIS:</p> <p>9 Q Okay. Great. Before we took a break</p> <p>10 there was some issues that you were going to</p> <p>11 review. Did you have an opportunity to do that?</p> <p>12 A Yes, ma'am, I did.</p> <p>13 Q Okay. And what did you discover with</p> <p>14 regard to the RLI bonds?</p> <p>15 A Do you want me to just go through the</p> <p>16 list?</p> <p>17 Q Yes, that would be great.</p> <p>18 A You asked me how many RLI bonds were</p> <p>19 granted under the Pereira decision.</p> <p>20 Q Uh-huh?</p> <p>21 A The answer is five. That's appeals.</p> <p>22 You asked me globally how many appeals have been</p>

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1 granted because of the Pereira decision. That  
2 answer is 63.  
3 You asked me how many RLI appeals were  
4 rejected as untimely, that answer is 17.  
5 You asked me globally how many appeals  
6 had been rejected as untimely. That answer is  
7 339.  
8 You asked me how many appeals have been  
9 granted globally -- I'm sorry, with RLI -- and  
10 that's nine.  
11 Q Uh-huh.  
12 A You asked me how many appeals have been  
13 granted globally, and that's 74.  
14 You asked me to identify a participant  
15 who I think has been harmed because of the payment  
16 of his bond. I identified Juan Valoy and  
17 referenced you to his pleadings in the intervenor  
18 motions.  
19 You asked me how many requests for  
20 mitigation we had with RLI. We have no record of  
21 requested mitigation. I know you said that you  
22 had had people who made phone calls. I talked to

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1 my people to try to figure out what bonds those  
2 were involved in. I wasn't able to do that. So  
3 if you've got information about that that you can  
4 put in front of me I'll comment on it. But we  
5 didn't have any as it relates to RLI. We had 234  
6 as it relates globally.  
7 Q And how many appeals globally have you  
8 filed on the Nexus appeals?  
9 A 339. I'm sorry. 339 have been  
10 rejected as untimely.  
11 Q Right, right, right.  
12 A Total filed appeals is 1,457. Globally  
13 208 with RLI. Sorry about that, Vivian. It's  
14 after 5:00, you know.  
15 Q Right. I was just looking at those  
16 numbers.  
17 A That doesn't work.  
18 Q And can you identify which five of the  
19 RLI bond appeals were granted under Pereira?  
20 A I'll have it sent -- I'll have it  
21 produced by the end of the day, when we're done.  
22 Q Okay. Thank you.

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1 A I mean after. Because I can't do it  
2 right now but as soon as we're done.  
3 Q Other than the --  
4 MR. HARRIS: Counsel, are you okay with  
5 that? Are you going to produce that?  
6 MR. SHOREMAN: Produce, the Pereira  
7 documents?  
8 MS. KATSANTONIS: The five RLI bond  
9 appeals that were affirmed based on the Pereira  
10 decision we asked for copies of that.  
11 MR. SHOREMAN: We can do that today.  
12 THE WITNESS: Yeah, Hazzar will put  
13 that list together.  
14 MR. SHOREMAN: Okay. We'll have it  
15 emailed to you today.  
16 Q And other than the one -- well, do you  
17 know what the basis of the other four appeals that  
18 were affirmed for RLI bonds?  
19 A I believe they were notice deficiencies  
20 but I will double-check. I already promised you  
21 that I would give you the nine so I will. So that  
22 will include the five for Pereira and then you'll

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1 have the others too. Sound good?  
2 Q Thank you.  
3 A You're welcome.  
4 Q Other than the [REDACTED] bond, are  
5 there any other bonds that you're aware of that  
6 were -- where the principal was harmed in any way  
7 because of a payment of an invoice?  
8 A I -- in order to answer that question  
9 more fully, I have A, begun to review other  
10 intervenors and I would like to supplement my  
11 answer by the end of today as it relates to  
12 identification of other people who've been harmed  
13 because their bonds have been paid.  
14 I also will say that until I have a  
15 full complement of the cancellations and  
16 understand the difference between the number of  
17 cancellations RLI has produced and the number that  
18 they say they have, I would need that information  
19 to be able to determine if other people were  
20 harmed.  
21 Q Okay. Other than [REDACTED], right now  
22 you don't have information of anyone else, though,

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<p>265</p> <p>1 correct?</p> <p>2 A No, I will provide a supplement.</p> <p>3 Q All right.</p> <p>4 A And I would say one person is too much.</p> <p>5 Q As to [REDACTED], can you just tell me</p> <p>6 again briefly how did the payment itself harm him,</p> <p>7 the payment of the bond?</p> <p>8 A We were forced to pay [REDACTED] bond</p> <p>9 because of an RLI demand.</p> <p>10 Q How did that --</p> <p>11 A However, he had been seeking to reopen</p> <p>12 his case, as I understand it. He is now having to</p> <p>13 reapply for benefits under USCIC separately</p> <p>14 because -- so when you have a case before the</p> <p>15 immigration court then you can file for relief</p> <p>16 under say USCIS provisions, right, benefits under</p> <p>17 the Immigration and Naturalization Act, right?</p> <p>18 You can apply for those benefits pursuant to</p> <p>19 your -- to your case and removal proceedings which</p> <p>20 is before the Department of Justice. But the</p> <p>21 relief that you're seeking is through USCIS. The</p> <p>22 Department of Justice doesn't make the decision</p>	<p>267</p> <p>1 He'll have to be rearrested again and a new case</p> <p>2 opened or he can apply for benefits under USCIS</p> <p>3 without the protections of being in removal</p> <p>4 proceedings. But the protections of being in</p> <p>5 removal proceedings are that you're not going to</p> <p>6 get arrested because the government now knows that</p> <p>7 you're applying for benefits. If you apply for</p> <p>8 benefits under USCIS and you're not in the country</p> <p>9 legally, you are sort of announcing to the</p> <p>10 Department of Justice and the Department of</p> <p>11 Homeland Security that you're here and in many</p> <p>12 instances, particularly with this administration,</p> <p>13 there is a negative repercussion to that.</p> <p>14 So if he loses the protection of the</p> <p>15 removal proceedings then any benefit that he</p> <p>16 applies for comes with the risk of being tracked</p> <p>17 down, arrested, held on a deportation order that</p> <p>18 isn't valid.</p> <p>19 Q What specifically happened in this</p> <p>20 case? What right specifically was affected when</p> <p>21 the bond was paid?</p> <p>22 A I'm going to -- I'm going to direct you</p>
<p>266</p> <p>1 about whether you get relief. The citizenship</p> <p>2 service does and then they communicate it to the</p> <p>3 Department of Justice and that makes the decision</p> <p>4 about whether you're removed or not. Do you</p> <p>5 understand?</p> <p>6 Q Yep.</p> <p>7 A So individuals who are in -- and I'm</p> <p>8 sorry, I'm going to ask you to restate the</p> <p>9 question because I just don't want to --</p> <p>10 Q I want to know how the payment of the</p> <p>11 bond, of [REDACTED], impacted his right?</p> <p>12 A So in a case like that --</p> <p>13 Q Specifically his case?</p> <p>14 A So once his bond is paid, the case is</p> <p>15 over, he has to go and apply for benefits under</p> <p>16 USCIS without the protections of a removal</p> <p>17 proceeding. So for example, if I'm in removal</p> <p>18 proceedings --</p> <p>19 Q Are you saying the payment of the bond</p> <p>20 stopped the removal proceedings?</p> <p>21 A I'm saying that the payment of the bond</p> <p>22 closed his case before the Department of Justice.</p>	<p>268</p> <p>1 to the pleadings. If you'd like me to, I can</p> <p>2 consult the pleadings before I answer further but</p> <p>3 I do want to make sure that the testimony I</p> <p>4 provide is a hundred percent. I don't want to do</p> <p>5 it based on all of my recollection.</p> <p>6 Q Yeah, I want to know exactly how he --</p> <p>7 A I'm not trying to be cute.</p> <p>8 Q No, no.</p> <p>9 A I don't want to say something that I'm</p> <p>10 not a hundred percent sure but you know I don't --</p> <p>11 I need to consult. It's just so long ago, you</p> <p>12 know.</p> <p>13 Q Right. Is it your testimony that the</p> <p>14 payment of the bond closed the removal proceeding?</p> <p>15 A Well, it closed its case before the</p> <p>16 EOIR, yes.</p> <p>17 Q And that's precluded the continuation</p> <p>18 of removal proceeding?</p> <p>19 A No, I mean, he would be -- he would</p> <p>20 be -- he would -- they could reassert removal</p> <p>21 proceedings under the removal order, right? So</p> <p>22 you know --</p>

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<p>269</p> <p>1 Q They would just continue it under the</p> <p>2 removal order.</p> <p>3 A No, that's not how it works. The EOIR</p> <p>4 is part of the Department of Justice, right, and</p> <p>5 so the EOIR opens cases and the Department of</p> <p>6 Justice runs the EOIR court. So it's not like --</p> <p>7 it's not like an Article 3 court, right?</p> <p>8 Q But I just want --</p> <p>9 A This is like an administrative court.</p> <p>10 Well, I understand. And as I told you, I need to</p> <p>11 review the documents. No, there's a larger</p> <p>12 question. You looked a little confused when I</p> <p>13 said it doesn't -- that the removal proceedings</p> <p>14 don't go on. I think it is probably instructive</p> <p>15 for me to explain that.</p> <p>16 Q I'm not interested in it.</p> <p>17 A I understand. But if you did know it</p> <p>18 might make a difference in how this case goes,</p> <p>19 right?</p> <p>20 Q No, I just want to know specifically</p> <p>21 what rights were precluded or how the payment of</p> <p>22 the bond impacted Juan Valoy?</p>	<p>271</p> <p>1 Q We'll move on.</p> <p>2 A -- I can provide you a general answer</p> <p>3 which you're not interested in. But I'm more than</p> <p>4 happy to supplement it. I'll get that -- I'll</p> <p>5 send you the pleadings.</p> <p>6 Q Okay. So with regard to -- and I'm</p> <p>7 going to say Nexus, and I mean, Nexus, Libre, and</p> <p>8 Homes for purposes?</p> <p>9 A I gotcha.</p> <p>10 Q Okay. So with regard to the current</p> <p>11 status of Nexus' financial condition, what is --</p> <p>12 is Nexus currently operating at a profit or loss?</p> <p>13 A Nexus is currently under the process of</p> <p>14 completing its input of financial data into</p> <p>15 QuickBooks. That is a process that is ongoing, as</p> <p>16 you are aware we have made several productions and</p> <p>17 those production changes as though processes</p> <p>18 continue.</p> <p>19 I can testify to a specific point in</p> <p>20 time. I can testify to what's in the records now.</p> <p>21 I can give you a copy of our KPI and we can talk</p> <p>22 about performance.</p>
<p>270</p> <p>1 A Ms. Katsantonis.</p> <p>2 Q Specifically?</p> <p>3 A You want to know specifically but you</p> <p>4 don't want to understand how the payment of</p> <p>5 invoices early affects the bond which is what I'm</p> <p>6 trying to explain to you --</p> <p>7 Q No?</p> <p>8 A -- globally. You want -- you're asking</p> <p>9 me to pull from my memory of Juan Valoy, which you</p> <p>10 know I'm reticent to do, thereby not answer the</p> <p>11 question versus provide you a thorough answer to</p> <p>12 the larger question of what happens.</p> <p>13 Q But I don't --</p> <p>14 A -- what happens when a person's in</p> <p>15 removal proceedings and a bond's paid. That's</p> <p>16 what you were asking and I was going to answer it.</p> <p>17 Q No. I want to know exactly what was</p> <p>18 impacted as you contend.</p> <p>19 A Based on [REDACTED]</p> <p>20 A Right.</p> <p>21 Q And as I indicated to you that I wanted</p> <p>22 to read those pleadings but --</p>	<p>272</p> <p>1 But we need to be clear that we are not</p> <p>2 a company that manages our day-to-day performance</p> <p>3 in QuickBooks and we have been responding now to a</p> <p>4 judicial order to get our books and records into</p> <p>5 QuickBooks, which we've been working on, as you</p> <p>6 well know we produced millions of pages of</p> <p>7 documents.</p> <p>8 Q The court didn't order Nexus to get its</p> <p>9 books into -- to get its finances into QuickBooks,</p> <p>10 right? I mean, Nexus advised the court that it</p> <p>11 was in the process of entering its financial data</p> <p>12 into QuickBooks, right?</p> <p>13 A No, we advised the court that we</p> <p>14 entered the financial data into QuickBooks at the</p> <p>15 end of the year. As you may remember, my</p> <p>16 understanding of the order and more than happy to</p> <p>17 go back and rereview it, but my understanding of</p> <p>18 the order was that it did require us to show you</p> <p>19 books and records out of QuickBooks even though</p> <p>20 those weren't where we originally kept our</p> <p>21 day-to-day management, right? So we did -- just</p> <p>22 to be clear, when the first preliminary injunction</p>

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<p>273</p> <p>1 was issued, it had a significant impact on our</p> <p>2 company because what it did is it stopped</p> <p>3 everything that we were doing and we had to</p> <p>4 completely revisit how we were booking -- how we</p> <p>5 were tracking financials.</p> <p>6 Q Didn't you advise the court that in</p> <p>7 2017 you were preparing taxes and getting the</p> <p>8 finances up to date?</p> <p>9 A Yes.</p> <p>10 Q Okay. And that in 2018, you advised</p> <p>11 that Nexus was entering its data into QuickBooks,</p> <p>12 right?</p> <p>13 A That's correct.</p> <p>14 Q And --</p> <p>15 A Pursuant to the order of opening our</p> <p>16 books and records so that you could see them. My</p> <p>17 understanding is that you wanted those records in</p> <p>18 QuickBooks. I didn't realize that you were</p> <p>19 willing to look at KPIs. It might have been</p> <p>20 easier.</p> <p>21 Q I don't believe RLI asked to see your</p> <p>22 books and records in the manner in which they were</p>	<p>275</p> <p>1 over more than a calendar year under the 606 GAAP</p> <p>2 accounting rule, we have to segment out our</p> <p>3 contract -- our contract's based on revenue not</p> <p>4 based on when we receive revenue, which makes</p> <p>5 sense, but based on when it's planned to be booked</p> <p>6 under the new accounting rule. That has created</p> <p>7 significant problems because we've had to go back</p> <p>8 and analyze, you know, life of contract and those</p> <p>9 types of things.</p> <p>10 So what we have decided to do is we</p> <p>11 are -- we are preparing financials and tax returns</p> <p>12 based on the modified cash accrual method through</p> <p>13 2018 and then in 2019 we will move to the GAAP</p> <p>14 compliant 606 rule and then in 2020 we plan to</p> <p>15 move to audited financials. So that is our plan</p> <p>16 and we're quite confident that while this has been</p> <p>17 a frustrating experience ultimately, you know, the</p> <p>18 company will grow and be stronger as a result of</p> <p>19 it.</p> <p>20 Q So which company is providing -- so you</p> <p>21 said you're going to do audited financials in</p> <p>22 2020?</p>
<p>274</p> <p>1 maintained. We never specified a way.</p> <p>2 A I thought you demanded a login to our</p> <p>3 QuickBooks. That's what I seem to remember.</p> <p>4 Q I mean, we won't -- it's not an -- it's</p> <p>5 not worth discussing.</p> <p>6 A Okay. Just based on my memory, Vivian,</p> <p>7 I'm not trying to be --</p> <p>8 Q I know. But Nexus has contended it's</p> <p>9 updating its books since 2017.</p> <p>10 A Right.</p> <p>11 Q And now we're at 2020. And is it</p> <p>12 Nexus' testimony that it cannot provide accurate</p> <p>13 information regarding the status of its financial</p> <p>14 condition?</p> <p>15 A Nexus' testimony is that we have</p> <p>16 engaged Grant Thornton, we've engaged Fusion CPA</p> <p>17 professionals in order to input and get a clear</p> <p>18 picture of where we are financially.</p> <p>19 When we began this process, the problem</p> <p>20 that we have is that the amount of money that we</p> <p>21 make a year makes us an accrual company for</p> <p>22 accounting purposes and because we earn revenue</p>	<p>276</p> <p>1 A That's correct.</p> <p>2 Q What about 2017, '18, and '19?</p> <p>3 A We can't -- we can't have audited</p> <p>4 financial statements in 2017 and 2018 because</p> <p>5 we're filing and doing them under the accrual cash</p> <p>6 method, right? So in order to do audited</p> <p>7 financials, you have to be GAAP compliant. In</p> <p>8 order to be GAAP compliant we have to recognize</p> <p>9 revenue under rule 606.</p> <p>10 Q Okay.</p> <p>11 A So I can't do that for 2017 or 2018</p> <p>12 because it would set us back even further in</p> <p>13 getting things done.</p> <p>14 Q Didn't you say --</p> <p>15 A So we're going to do it in 2019 and</p> <p>16 then in 2020 we move to audited financials. And</p> <p>17 that's based on a conversation and decision that I</p> <p>18 made yesterday in communication with Grant</p> <p>19 Thornton.</p> <p>20 Q Didn't Nexus testify that in</p> <p>21 November 2018 that it had completed inputting all</p> <p>22 of its data for 2017?</p>

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<p>277</p> <p>1 A We had completed inputting data, but we</p> <p>2 were reconciling data. As you well know one of</p> <p>3 the concerns that you've had are items that were</p> <p>4 booked as revenue of, like, combined client</p> <p>5 revenue of such and such million, for example. So</p> <p>6 while information was inputted into QuickBooks, we</p> <p>7 have been reconciling QuickBooks, as you know,</p> <p>8 because you've seen the reports and you've seen</p> <p>9 the different iterations of them. So you -- and</p> <p>10 in fact, you even asked deposition questions about</p> <p>11 what was transferred from a group number to</p> <p>12 individuals. So that's what's happening and it is</p> <p>13 a process.</p> <p>14 Q What I'm trying to understand is I just</p> <p>15 want to know where you stand financially.</p> <p>16 So for -- and we had Mr. Moore's</p> <p>17 deposition that you sat in on last week, right?</p> <p>18 A Yes, ma'am.</p> <p>19 Q And Mr. Moore testified that for the</p> <p>20 '17, '18, and '19, that Nexus does not know</p> <p>21 whether it's operating at a profit or a loss; is</p> <p>22 that true?</p>	<p>279</p> <p>1 profit or loss for 2017?</p> <p>2 MR. SHOREMAN: Asked and answered.</p> <p>3 A I believe that we broke even. I don't</p> <p>4 know what the exact dollar amount is.</p> <p>5 Q You don't know?</p> <p>6 MR. SHOREMAN: Asked and answered.</p> <p>7 A You're asking my personal knowledge? I</p> <p>8 don't know. I don't know.</p> <p>9 Q No, I'm asking Nexus' -- today is the</p> <p>10 day that Nexus is supposed to let me know what its</p> <p>11 financial condition is.</p> <p>12 A I answered the question, Vivian. You</p> <p>13 might not like the answer but I answered the</p> <p>14 question. We are finalizing our financial</p> <p>15 statements and you'll have a copy as soon as</p> <p>16 they're done.</p> <p>17 Q So for 2017, you don't know whether</p> <p>18 Nexus operated at a profit or loss?</p> <p>19 A The answer's going to be the same no</p> <p>20 matter how many times you ask the question.</p> <p>21 Q Is the answer no?</p> <p>22 A I do not know exact what the profit or</p>
<p>278</p> <p>1 A Nexus believes that we'll break even or</p> <p>2 close to break even for those years. We are in</p> <p>3 the process of finalizing the financial statements</p> <p>4 and as soon as I have them and the tax returns and</p> <p>5 as soon as I have them, you will.</p> <p>6 Q Okay. I'm not interested in what Nexus</p> <p>7 believes. I want to know what facts you have.</p> <p>8 So does Nexus know whether it operated</p> <p>9 at a profit or loss for 2017?</p> <p>10 MR. SHOREMAN: Asked and answered.</p> <p>11 A Yeah, we believe that we broke even or</p> <p>12 close to broke even.</p> <p>13 Q You believe based on what basis?</p> <p>14 A And once we have -- once we have the</p> <p>15 financial statements done I will provide copies to</p> <p>16 you.</p> <p>17 Q No.</p> <p>18 A No? You don't want them? I won't give</p> <p>19 them to you then.</p> <p>20 Q I asked you not to tell me your belief.</p> <p>21 I want to know the facts, okay?</p> <p>22 Do you know whether Nexus operated on a</p>	<p>280</p> <p>1 loss amount was but as soon as those financial</p> <p>2 statements are done, Ms. Katsantonis, you will</p> <p>3 have a copy.</p> <p>4 Q Okay.</p> <p>5 A And 2018, do you know whether Nexus was</p> <p>6 operating at a profit or loss?</p> <p>7 A And as I said, the same answer is going</p> <p>8 to apply until I have the financial statements. I</p> <p>9 don't know what the exact dollar amount is. I</p> <p>10 have a sense. You're not interested in my sense</p> <p>11 so I will tell you that --</p> <p>12 Q I'll talk to you about your sense later</p> <p>13 and what it's based on.</p> <p>14 A I already told you. I answered that</p> <p>15 question already. But based on what -- I don't</p> <p>16 know what the exact dollar amount is but as soon</p> <p>17 as we have the financial statements completed,</p> <p>18 Ms. Katsantonis, you'll have a copy.</p> <p>19 Q All right. And for 2019, you don't</p> <p>20 know whether Nexus operated at a profit or loss,</p> <p>21 correct?</p> <p>22 A So we -- basically -- I don't know the</p>

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<p>281</p> <p>1 exact dollar amount until we have the financial</p> <p>2 statements.</p> <p>3 Q I'm not asking for the exact dollar</p> <p>4 amount.</p> <p>5 A Sure you are.</p> <p>6 Q No, I'm asking whether you operated at</p> <p>7 a profit or loss.</p> <p>8 MR. SHOREMAN: Asked and answered.</p> <p>9 A And I don't know until I have the exact</p> <p>10 dollar amount.</p> <p>11 Q So you don't know?</p> <p>12 MR. SHOREMAN: Asked and answered.</p> <p>13 A Hence my answer.</p> <p>14 Q And what role is Grant Thornton taking?</p> <p>15 A What do you mean?</p> <p>16 Q Well, there was testimony that you've</p> <p>17 also hired Fusion CPA.</p> <p>18 A Uh-huh.</p> <p>19 Q So what role is Grant Thornton doing</p> <p>20 with respect to your financial record?</p> <p>21 A Well, that's an easier to answer</p> <p>22 question. Grant Thornton is focusing on the GAAP</p>	<p>283</p> <p>1 Thornton yesterday.</p> <p>2 Q Do you have any specific time before</p> <p>3 September?</p> <p>4 A I don't. That's when the extension is</p> <p>5 up so that's the reason it's relevant. That's why</p> <p>6 September is relevant. But we're hoping to get it</p> <p>7 done before then.</p> <p>8 Q And what about with Fusion CPA?</p> <p>9 A Fusion CPA is currently working on '17</p> <p>10 and '18, as I indicated, Grant Thornton is going</p> <p>11 to review those, they'll naturally have to,</p> <p>12 Ms. Katsantonis, because of course they're going</p> <p>13 to have to extrapolate the GPS revenue, the</p> <p>14 contract revenue, and all of that stuff. So, you</p> <p>15 know, with the old -- pursuant to the old</p> <p>16 contracts and the new contracts it's just a lot to</p> <p>17 take into consideration. So they're doing that</p> <p>18 and then Grant Thornton will get it to a point</p> <p>19 where it's GAAP compliant.</p> <p>20 Q And with regard to the financial</p> <p>21 condition of Nexus in 2017, at the November 2018</p> <p>22 preliminary injunction hearing, Nexus represented</p>
<p>282</p> <p>1 compliant standard for 2019 and the audited</p> <p>2 financials beyond.</p> <p>3 Q Okay. And what -- and what is Fusion</p> <p>4 CPA doing?</p> <p>5 A We also have Grant Thornton looking</p> <p>6 over the financial statements. We have Fusion CPA</p> <p>7 producing the financial statements and then Grant</p> <p>8 Thornton will be reviewing them. We will then</p> <p>9 obviously have the GAAP accounting standard,</p> <p>10 financial statements for 2019, which Grant</p> <p>11 Thornton is taking the lead on and then audited</p> <p>12 financials 2020 and beyond, which Grant Thornton</p> <p>13 will take the lead on.</p> <p>14 Q So Grant Thornton will issue audited</p> <p>15 financial statements only for 2020 and beyond?</p> <p>16 A 2019 and beyond.</p> <p>17 Q And do you have a time frame in which</p> <p>18 Grant Thornton is required to provide deliverables</p> <p>19 to Nexus?</p> <p>20 A We expect that the 2019 statements and</p> <p>21 tax filings will be ready before the -- before</p> <p>22 September, pursuant to my communication with Grant</p>	<p>284</p> <p>1 that the financial statement it provided was</p> <p>2 accurate, correct?</p> <p>3 A I think we represented it was accurate</p> <p>4 at the time with any kind of caveats that it may</p> <p>5 not be complete.</p> <p>6 Q Well, and since then have you had</p> <p>7 reason to understand that it was not complete?</p> <p>8 A I believe I have been clear throughout</p> <p>9 this entire litigation that it's not complete and</p> <p>10 that we're completing it. I think we were very</p> <p>11 clear about that.</p> <p>12 Which document are you looking at? Or</p> <p>13 do you have a document you want me to look at?</p> <p>14 Q No, I was asking you about what was</p> <p>15 submitted to the court.</p> <p>16 A You asked specifically about 2017.</p> <p>17 Q Right?</p> <p>18 A That's why I was asking is there a</p> <p>19 document that you want me to review? I'm happy to</p> <p>20 look at it.</p> <p>21 Q And so at the court hearing Nexus</p> <p>22 asserted that in 2017 it was operating at a</p>

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<p>285</p> <p>1 profit, right?</p> <p>2 <b>A Do you have -- I mean, I assume that</b></p> <p>3 <b>you're representing -- you're talking about</b></p> <p>4 <b>something that we --</b></p> <p>5 Q Presented to the court.</p> <p>6 <b>A -- a statement, right? So if you have</b></p> <p>7 <b>something that you're asking me questions about I</b></p> <p>8 <b>would ask that you provide it to me so that I know</b></p> <p>9 <b>what we're talking about.</b></p> <p>10 Q But you don't know whether or not Nexus</p> <p>11 advised the court it was operating at a profit in</p> <p>12 2017?</p> <p>13 <b>A Again, I need to understand what report</b></p> <p>14 <b>you're talking about. We made several</b></p> <p>15 <b>different -- 2017 we were engaged in this</b></p> <p>16 <b>litigation, you know, pretty heavily. I just want</b></p> <p>17 <b>to make sure I know what you're talking about.</b></p> <p>18 <b>I'm sure you want to -- I'm sure you want me to</b></p> <p>19 <b>know what you're talking about too.</b></p> <p>20 MR. SHOREMAN: Thank you.</p> <p>21 MS. KATSANTONIS: Let me mark that one,</p> <p>22 I'm not sure. Hold on.</p>	<p>287</p> <p>1 Q -- ignore it. I don't believe it was</p> <p>2 presented to the court with the writing. So for</p> <p>3 the record this is document 138-20. That was</p> <p>4 filed with the court on November 28th, 2018.</p> <p>5 Q So Mr. Donovan, are you aware that this</p> <p>6 profit and loss statement was submitted by</p> <p>7 Nexus --</p> <p>8 <b>A I can see the case.</b></p> <p>9 Q -- as a representation of its</p> <p>10 financials?</p> <p>11 <b>A Yeah, I can see the case detail on the</b></p> <p>12 <b>top and I believe this is what we provided.</b></p> <p>13 Q And in fact, reviewing this do you</p> <p>14 understand now that it's not an accurate profit</p> <p>15 and loss statement for the January through</p> <p>16 December 2017 time frame?</p> <p>17 <b>A Well, as we've continued to update our</b></p> <p>18 <b>financial statements, they have changed and I</b></p> <p>19 <b>think we've been clear about that. So I'm sure</b></p> <p>20 <b>that when it was produced it was accurate as of</b></p> <p>21 <b>when it was produced with the information that was</b></p> <p>22 <b>in QuickBooks. I mean, this is a QuickBooks</b></p>
<p>286</p> <p>1 MR. SHOREMAN: Do you want to have this</p> <p>2 one marked? This would be 12.</p> <p>3 MS. KATSANTONIS: I think it's the same</p> <p>4 as this one. Here, let me mark this one. It's</p> <p>5 the same thing but they're in different forms and</p> <p>6 they have the same number.</p> <p>7 (Donovan Exhibit 12 marked for</p> <p>8 identification and attached to the transcript.)</p> <p>9 MR. SHOREMAN: This is too wild.</p> <p>10 <b>A This looks completely -- no.</b></p> <p>11 Q So the back page of this document is</p> <p>12 dated Monday, November 26th, 2018.</p> <p>13 Do you see that?</p> <p>14 MR. SHOREMAN: Last page?</p> <p>15 <b>A I do.</b></p> <p>16 MR. SHOREMAN: Excuse me, counsel, the</p> <p>17 third page of my document has some writing on it.</p> <p>18 Is that yours?</p> <p>19 <b>A Yeah, mine too.</b></p> <p>20 Q It's not my writing and we can ignore</p> <p>21 it. For purposes of testimony just --</p> <p>22 <b>A Ignore it.</b></p>	<p>288</p> <p>1 <b>profit and loss statement.</b></p> <p>2 <b>So we have provided -- and you know,</b></p> <p>3 <b>Ms. Katsantonis, with all due respect, you know</b></p> <p>4 <b>that there have been several -- you have been</b></p> <p>5 <b>provided several different updates as Nexus has</b></p> <p>6 <b>been completing its process.</b></p> <p>7 Q So --</p> <p>8 <b>A So it's not like you don't know that.</b></p> <p>9 <b>You guys have been receiving updates extensively.</b></p> <p>10 Q I'm trying to understand, Mr. Donovan,</p> <p>11 when all of the data was input, or if it has been</p> <p>12 inputted for 2017?</p> <p>13 <b>A All of the data has been inputted.</b></p> <p>14 <b>They were working on reconciliations to ensure</b></p> <p>15 <b>that -- and a combined client income, for example,</b></p> <p>16 <b>was extrapolated out to the specific client or</b></p> <p>17 <b>combined in -- expenses were extrapolated out.</b></p> <p>18 Q Mr. Donovan, has all the reconciliation</p> <p>19 for 2017, has all the -- first of all, has all the</p> <p>20 data input for 2017, is it complete?</p> <p>21 <b>A It's not -- it's not fully reconciled</b></p> <p>22 <b>or we would have the financial statements for you.</b></p>

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<p style="text-align: right;">289</p> <p>1 And you will have them and you'll have them soon</p> <p>2 and that will be when it is fully reconciled.</p> <p>3 Q Okay. So as of November 2018, the --</p> <p>4 QuickBooks was -- did not adequately represent the</p> <p>5 financial condition of Nexus, correct?</p> <p>6 A As of 2018, we were adding data to</p> <p>7 QuickBooks as we explained to you and the court to</p> <p>8 ensure that we could produce access to the</p> <p>9 financial statements that were ordered by the</p> <p>10 court.</p> <p>11 Q I'm just trying to --</p> <p>12 A And we --</p> <p>13 Q I'm just trying to -- I'm not -- I'm</p> <p>14 just trying to understand timing of when things</p> <p>15 were -- and if they're still not accurate as of</p> <p>16 today that's great. I'm just trying to understand</p> <p>17 that. It's very simple.</p> <p>18 A I've answered that question, Vivian.</p> <p>19 So the data is still being reconciled. When it is</p> <p>20 reconciled, we will file the taxes and produce the</p> <p>21 income statements and submit them to you. That</p> <p>22 will happen as soon as it's done.</p>	<p style="text-align: right;">291</p> <p>1 for deposition transcript to look like, you know,</p> <p>2 but you know, you know that this is a work in</p> <p>3 progress and you know that they will be produced</p> <p>4 as soon as it's done.</p> <p>5 Q Okay. So with regard -- and so based</p> <p>6 on your testimony, I think I know the answer to</p> <p>7 the question but let me ask it, does Nexus</p> <p>8 currently maintain or otherwise have access to a</p> <p>9 balance sheet or other financial statement that</p> <p>10 accurately sets forth Nexus' assets and</p> <p>11 liabilities?</p> <p>12 A No. But we are close in that we</p> <p>13 continue to reconcile data every day and we're</p> <p>14 much, much closer to having fully producible,</p> <p>15 printable, and one hundred percent up-to-date</p> <p>16 documents through QuickBooks.</p> <p>17 Q And that's the same for 2017, '18, and</p> <p>18 '19, correct?</p> <p>19 A That's correct.</p> <p>20 Q Okay. And do you have an understanding</p> <p>21 of what is the current aggregate value of Nexus'</p> <p>22 assets?</p>
<p style="text-align: right;">290</p> <p>1 Q Okay.</p> <p>2 A And I'm happy to say that will be done</p> <p>3 soon. So it's a process. You know, it's</p> <p>4 happening. I will produce those when we file</p> <p>5 them.</p> <p>6 Q All right. So the profit and loss</p> <p>7 statements that we have for 2017 are inaccurate as</p> <p>8 of today, correct?</p> <p>9 A They're a work in progress, as we say.</p> <p>10 Q They're inaccurate as of today.</p> <p>11 A They do not contain all of the</p> <p>12 information and all of the reconciled information</p> <p>13 as we have explained throughout this process.</p> <p>14 Q And so they don't --</p> <p>15 A It's a bit disingenuous to go into</p> <p>16 court with a club and force people to print</p> <p>17 documents you know aren't done and then in a</p> <p>18 deposition hit them for producing documents that</p> <p>19 aren't done. Ms. Katsantonis, you know that these</p> <p>20 financial documents weren't complete when you</p> <p>21 demanded the productions. You've known that they</p> <p>22 weren't reconciled. You know, perhaps it's nice</p>	<p style="text-align: right;">292</p> <p>1 A It looks like our most recent profit</p> <p>2 and loss, which was provided to you from January</p> <p>3 through December of 2019, list total current</p> <p>4 assets at \$784,088.20.</p> <p>5 Q And are you looking at a document Bates</p> <p>6 Stamped NEXUS027807?</p> <p>7 A No. I'm looking at a document I</p> <p>8 brought today that I plan to give you. But it may</p> <p>9 very well be the same document, I don't know.</p> <p>10 Q May I see it, please?</p> <p>11 A Of course you may. Killing trees here.</p> <p>12 Q Thank you.</p> <p>13 A You're welcome.</p> <p>14 Q Do you have an understanding why this</p> <p>15 is marked "old" on the top?</p> <p>16 A I believe it is what was produced.</p> <p>17 Q So you don't know why it's marked</p> <p>18 old -- next to Nexus Services Inc. old balance</p> <p>19 sheet.</p> <p>20 A Let me get the answer to that question.</p> <p>21 Q Okay. If you don't know, let's just</p> <p>22 keep going and then you can let me know.</p>

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<p>293</p> <p>1 A Sure. Yeah, absolutely.</p> <p>2 Q And in looking at this balance sheet,</p> <p>3 it does not include any rentals from any of the</p> <p>4 Homes properties?</p> <p>5 A Yeah.</p> <p>6 Q Do you have another copy of that?</p> <p>7 A I don't. Sorry. But this is a copy</p> <p>8 for you. At least I brought something to share --</p> <p>9 or to leave.</p> <p>10 As you may be aware, we did break Homes</p> <p>11 P&amp;L out and you are aware of that, of course,</p> <p>12 because we produced those to you pursuant through</p> <p>13 the special master production. So if they're --</p> <p>14 if there's a -- there may be a reason for that in</p> <p>15 that they separated out the Homes P&amp;L from Nexus.</p> <p>16 And we actually have a separate account for Homes.</p> <p>17 Q Do you also have with you the alleged</p> <p>18 2019 profit and loss statement, the most recent</p> <p>19 one? I can give you what has been provided to us</p> <p>20 and you can tell me if this is accurate?</p> <p>21 A Please.</p> <p>22 MS. KATSANTONIS: Let's mark that.</p>	<p>295</p> <p>1 added, I don't know.</p> <p>2 Q Well, if it hasn't been reconciled it</p> <p>3 can't be accurate, right?</p> <p>4 A Well, it can be accurate in that what's</p> <p>5 in there has been properly inputted. Before it's</p> <p>6 reconciled we wouldn't run a financial report</p> <p>7 until we reconciled it. We wouldn't file a tax</p> <p>8 return until we reconciled it. But we're putting</p> <p>9 information into QuickBooks every day. So all of</p> <p>10 the information is the information you put in. So</p> <p>11 at any point in time you could see what</p> <p>12 information you put into QuickBooks.</p> <p>13 Q Right. These documents are not an</p> <p>14 accurate reflection of Nexus' financial condition,</p> <p>15 is that true?</p> <p>16 A As I indicated, Ms. Katsantonis, no.</p> <p>17 Because we are continuing to update them as you</p> <p>18 well know because you sought an injunctive order</p> <p>19 against me to make me do it. So you know we're</p> <p>20 continuing to do it. You have walked with us</p> <p>21 through that process. It is not done but it's</p> <p>22 closer than ever and we're excited that we're</p>
<p>294</p> <p>1 (Donovan Exhibit 13 marked for</p> <p>2 identification and attached to the transcript.)</p> <p>3 MR. SHOREMAN: Is this the alleged</p> <p>4 Exhibit 13?</p> <p>5 A This is, what I'm looking at, Vivian,</p> <p>6 is the same document.</p> <p>7 Q Okay. And so are you basing the</p> <p>8 answers to your questions on this 2019 profit and</p> <p>9 loss statement or balance sheet?</p> <p>10 A Yes.</p> <p>11 Q Okay.</p> <p>12 A Between that and the balance sheet,</p> <p>13 yes, ma'am.</p> <p>14 Q Is it your contention that this</p> <p>15 document is accurate?</p> <p>16 A It's my contention that this document</p> <p>17 is accurate at the time. As I told you before, we</p> <p>18 are continuing to reconcile and continuing to add.</p> <p>19 So I can't tell you that it's a hundred percent</p> <p>20 accurate. I can tell you that everything that's</p> <p>21 in there is accurate. There may be things that</p> <p>22 aren't reconciled or things that haven't been</p>	<p>296</p> <p>1 going to be able to get those reports to you very</p> <p>2 soon.</p> <p>3 Q Your contention is that that 2019</p> <p>4 profit and loss statement is closer than ever to</p> <p>5 the accurate financial condition of Nexus?</p> <p>6 A I would say that it's closer than</p> <p>7 previous iterations and we're going to continue</p> <p>8 to -- now, of course in 2019, we have not</p> <p>9 reconciled that year. So 2018 or 2017's</p> <p>10 reconciliations will be further along naturally.</p> <p>11 Q So 2019 is not an accurate reflection</p> <p>12 of Nexus' financial condition, the profit and loss</p> <p>13 statement, correct?</p> <p>14 MR. SHOREMAN: Asked and answered.</p> <p>15 A The information inputted in the 2019</p> <p>16 financial statement is absolutely accurate but it</p> <p>17 may not be full and therefore -- and there may not</p> <p>18 be reconciliations done.</p> <p>19 Q I'm just asking. So it's not --</p> <p>20 because of those things that you're talking about,</p> <p>21 it is not an accurate reflection of Nexus'</p> <p>22 financial condition, right?</p>

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<p>297</p> <p>1 MR. SHOREMAN: Objection. Asked and</p> <p>2 answered.</p> <p>3 A Right. Exactly. We would normally</p> <p>4 want to reconcile a financial statement before we</p> <p>5 would file a tax return, for example. So I -- we</p> <p>6 are continuing to reconcile client income, I think</p> <p>7 that's really one of the major parts of this. And</p> <p>8 so for that purpose, for that reason it's not</p> <p>9 accurate now because it doesn't reflect all the</p> <p>10 income.</p> <p>11 MS. KATSANTONIS: Mark that.</p> <p>12 (Donovan Exhibit 14 marked for</p> <p>13 identification and attached to the transcript.)</p> <p>14 Q This is the 2018 profit and loss</p> <p>15 statement that was also produced to us recently in</p> <p>16 this litigation.</p> <p>17 So I'm going to ask you if you compare</p> <p>18 the two, for example, the 2019 profit and loss</p> <p>19 statement doesn't include any of the rent from the</p> <p>20 Homes properties, correct?</p> <p>21 A That's correct.</p> <p>22 Q And with regard to GPS costs on page 2,</p>	<p>299</p> <p>1 balance may include equipment that has -- once</p> <p>2 it's returned is offset. So we are going to --</p> <p>3 we're not going to --</p> <p>4 Q I'm just trying to get to the accuracy</p> <p>5 of this statement.</p> <p>6 A I gotcha. And I'm explaining it.</p> <p>7 Q You don't think it's accurate, do you?</p> <p>8 A Do I think that it could be more</p> <p>9 accurate? Absolutely. I mean what you're saying</p> <p>10 is -- what I'm not going to let you do,</p> <p>11 Ms. Katsantonis, is put words in my mouth to</p> <p>12 somehow say that something we put on a financial</p> <p>13 statement is inaccurate. It's absolutely</p> <p>14 incorrect to say that. We were forced to add our</p> <p>15 financial data to QuickBooks for the purposes of</p> <p>16 complying with an order in this case. An order</p> <p>17 you sought. An order you argued for.</p> <p>18 Q Mr. Donovan, I'm just trying to ask you</p> <p>19 whether --</p> <p>20 A Articulate, I might add.</p> <p>21 Q -- this document, are you contending</p> <p>22 it's accurate?</p>
<p>298</p> <p>1 for example, the 2018 profit and loss sets forth</p> <p>2 GPS costs at 4.6 million?</p> <p>3 A Uh-huh.</p> <p>4 Q Do you see that?</p> <p>5 A I do.</p> <p>6 Q And the 2019 has it at 1.152 million?</p> <p>7 Do you see that?</p> <p>8 A I do.</p> <p>9 Q And do you believe that number's</p> <p>10 accurate?</p> <p>11 A I do believe that we need to further</p> <p>12 reconcile it, but I also do believe that there's a</p> <p>13 significant reduction in GPS costs for 2019, yes.</p> <p>14 I don't -- yeah, I would want to see the fully --</p> <p>15 I would want to have an opportunity to fully</p> <p>16 revise and reconcile our financial statements</p> <p>17 which our accounting team is doing.</p> <p>18 Q Don't you have an account payable for</p> <p>19 2019 to Buddi of 3-point -- over \$3 million?</p> <p>20 A There is a balance, yes.</p> <p>21 Q And that's not reflected here, right?</p> <p>22 A It wouldn't necessarily be because that</p>	<p>300</p> <p>1 A And I'm telling you --</p> <p>2 Q That's all I want to know.</p> <p>3 MR. SHOREMAN: Objection.</p> <p>4 A -- that it is accurate to the extent</p> <p>5 that the information that is in there is accurate</p> <p>6 but it may not be the full complement of</p> <p>7 information. We certainly didn't put anything in</p> <p>8 here that wasn't accurate or wasn't truthful.</p> <p>9 Q But it's not a full --</p> <p>10 A It's not a full production of the</p> <p>11 financial status of the company, correct. But</p> <p>12 nothing that's in here has been put in</p> <p>13 incorrectly. I just want to make sure we're</p> <p>14 clear. We're continuing to add information,</p> <p>15 continuing to reconcile bank accounts and as we</p> <p>16 do, we'll get -- once we file the tax returns and</p> <p>17 have the income statements, as I said we'll</p> <p>18 produce them to you.</p> <p>19 Q For 2019 it provides bond breach</p> <p>20 payment of 978,000; that's not an accurate number,</p> <p>21 is it?</p> <p>22 A It would seem that there are bond</p>

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<p>301</p> <p>1 breaches that probably aren't reconciled in this</p> <p>2 report yet but that would also not surprise me</p> <p>3 given the fact that we're continuing to work on</p> <p>4 '17 and '18.</p> <p>5 Q Right. My only point I'm trying to</p> <p>6 make is that the numbers in this -- you're not</p> <p>7 relying on this profit and loss statement as an</p> <p>8 accurate depiction of Nexus' financial condition,</p> <p>9 correct?</p> <p>10 MR. SHOREMAN: Objection. Asked and</p> <p>11 answered.</p> <p>12 A As I think we said in 2017, we never</p> <p>13 relied on QuickBooks which is why it was very</p> <p>14 frustrating that it's pursuant to the order that</p> <p>15 you argued for in this case, we had to put all</p> <p>16 that information in there. It has completely</p> <p>17 slowed us down and it's the reason that we're in</p> <p>18 the situation that we're in right now. We're</p> <p>19 fixing it, we're getting it done and we'll be</p> <p>20 stronger as a result of it.</p> <p>21 Q So, again, with regard to travel, let's</p> <p>22 say, the 2018 has 725,000 and the 2019 has</p>	<p>303</p> <p>1 Q All right. And so neither of these</p> <p>2 profit and loss statements are accurate to fully</p> <p>3 show the financial condition of Nexus, correct?</p> <p>4 MR. SHOREMAN: Asked and answered.</p> <p>5 A They're not fully finished, but once</p> <p>6 they're done, you will have them, promise you.</p> <p>7 MS. KATSANTONIS: I want to make sure</p> <p>8 that Nexus is not relying on these documents ?</p> <p>9 A I told you we never relied -- I told</p> <p>10 you we didn't rely on the QuickBooks when you</p> <p>11 asked us to put it in there two years ago. No,</p> <p>12 we're not. Absolutely not.</p> <p>13 Q Well, that -- what led us to it is</p> <p>14 because I said what is the current aggregate value</p> <p>15 of Nexus' asset. So is the answer you don't know?</p> <p>16 A The answer, as it relates, I can answer</p> <p>17 what's on this statement. I can tell you --</p> <p>18 Q I don't want to know that. I want to</p> <p>19 know that.</p> <p>20 A -- that we're reconciling it.</p> <p>21 Q I want to know what the answer is.</p> <p>22 A And that's the answer.</p>
<p>302</p> <p>1 negative \$231. That wouldn't be an accurate --</p> <p>2 A Probably would be indicia that it</p> <p>3 hasn't been reconciled yet.</p> <p>4 Q Okay. And has your payroll -- what is</p> <p>5 your current payroll?</p> <p>6 A Our current payroll a week is now about</p> <p>7 110,000.</p> <p>8 Q So on a yearly basis?</p> <p>9 A That would be 52 100,000s, so</p> <p>10 5.2 million.</p> <p>11 Q Okay.</p> <p>12 A That was my horrible math so if that's</p> <p>13 wrong.</p> <p>14 Q So on the 2018 statement, it provides</p> <p>15 payroll at 7.5 and for 2019, it provides payroll</p> <p>16 at 2.275 million. Those numbers would not be</p> <p>17 accurate either, correct?</p> <p>18 A Obviously payroll is probably still</p> <p>19 being reconciled in 2019.</p> <p>20 Q Right.</p> <p>21 A Do you want to grab the door? I'm just</p> <p>22 thinking that that might become --</p>	<p>304</p> <p>1 Q What is the current aggregate value of</p> <p>2 Nexus' assets? You don't know, is that the</p> <p>3 answer?</p> <p>4 A We're currently reconciling our</p> <p>5 financial data. I have what's available. I can</p> <p>6 quote you what's on the reports that you have. I</p> <p>7 can tell you that we're continuing to reconcile</p> <p>8 it.</p> <p>9 Q Right. But you just said you're not</p> <p>10 relying on the report.</p> <p>11 A That's all I can tell you. Right. We</p> <p>12 are -- that's why we're reconciling them.</p> <p>13 Q Let's put the reports away. You're not</p> <p>14 relying on them, right?</p> <p>15 A Right.</p> <p>16 Q So I want to know what is the current</p> <p>17 aggregate value of Nexus' assets?</p> <p>18 MR. SHOREMAN: Objection.</p> <p>19 A And I told you that we're reconciling</p> <p>20 these reports. You understand exactly --</p> <p>21 Q So you don't know -- can't you just</p> <p>22 simple advise me that you don't know?</p>

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<p>305</p> <p>1 A I already told you. How many times</p> <p>2 have I told you, I do not know exactly as we are</p> <p>3 continuing to reconcile the financial statements,</p> <p>4 something you're quite well aware of.</p> <p>5 Q Do you know how much Nexus currently</p> <p>6 has in liquid assets that are presently available</p> <p>7 to satisfy Nexus' current liabilities?</p> <p>8 A I can get that information for you.</p> <p>9 Q But you don't know as you sit here</p> <p>10 today?</p> <p>11 A Off the top of my head I don't know</p> <p>12 what our liquid assets are but I can certainly</p> <p>13 give it to you by the end of the deposition.</p> <p>14 Q What is the aggregate value of Nexus'</p> <p>15 unencumbered interest in real estate assets?</p> <p>16 MR. SHOREMAN: The unencumbered value</p> <p>17 of real estate assets?</p> <p>18 Q Right?</p> <p>19 A You're asking for the value of</p> <p>20 unencumbered real estate or the equity in</p> <p>21 encumbered real estate?</p> <p>22 Q The unencumbered interest in real</p>	<p>307</p> <p>1 remember?</p> <p>2 Q Does Big Marco not have any liens on</p> <p>3 any of your property?</p> <p>4 A He does not.</p> <p>5 Q And are there any other liens or</p> <p>6 collateral agreement that any of the real estate</p> <p>7 has been encumbered by?</p> <p>8 A There were. However, I believe all of</p> <p>9 them have been released. The only one left is</p> <p>10 the -- the only one left is the corporate campus.</p> <p>11 But, yes.</p> <p>12 Q And you have no equity in the corporate</p> <p>13 campus?</p> <p>14 A Well, we have some equity in the</p> <p>15 corporate campus but then we have a deed of trust</p> <p>16 on a second deed of trust so no when you consider</p> <p>17 that.</p> <p>18 Q So it's all encumbered?</p> <p>19 A Right.</p> <p>20 Q What is the aggregate value of Nexus'</p> <p>21 interest in accounts receivable?</p> <p>22 A We don't track accounts receivable that</p>
<p>306</p> <p>1 estate assets?</p> <p>2 A A dollar amount?</p> <p>3 Q Uh-huh.</p> <p>4 A I believe it's \$36,000 in one piece of</p> <p>5 property that is fully owned.</p> <p>6 Q And what property is that?</p> <p>7 A It's -- it's a property in Middlesex</p> <p>8 County, Virginia. It's a piece of land, I'll have</p> <p>9 to get you the detail on it.</p> <p>10 Q Okay. And to what extent are Nexus'</p> <p>11 real estate assets encumbered by liens or</p> <p>12 collateral agreements or deeds of trust from other</p> <p>13 third parties?</p> <p>14 A So all of our built properties have</p> <p>15 mortgages on them so they have deeds of trust.</p> <p>16 And then some of our properties, like our</p> <p>17 corporate campus, has a deed of trust to a bail</p> <p>18 agent as well.</p> <p>19 Q And who's the bail agent?</p> <p>20 A Statewide Bonding.</p> <p>21 Q And is that Marco DiMandri [sic]?</p> <p>22 A It is not. LiMandri. Big Marco,</p>	<p>308</p> <p>1 way. We are unfortunately going to have to under</p> <p>2 the new accounting rules and so it's a reality</p> <p>3 that we're facing. But presently we don't track</p> <p>4 AR that way and that's because we have a very</p> <p>5 aggressive payment waiver program. We're proud to</p> <p>6 say that over half of our clients don't pay each</p> <p>7 month, which sounds odd, but we're proud to say</p> <p>8 that because it's reflective of the service that</p> <p>9 we provide to a disenfranchised community that</p> <p>10 needs help, right? So the fact that more than</p> <p>11 half of our people don't pay every month is a sign</p> <p>12 that we're helping people who really need it.</p> <p>13 MR. WILLIAMS: Are you asking all these</p> <p>14 financial questions to see if we can reach bond</p> <p>15 breach obligations?</p> <p>16 MS. KATSANTONIS: Yes.</p> <p>17 MR. WILLIAMS: That's what I'm thinking</p> <p>18 you're trying -- he can answer that. Just say do</p> <p>19 you believe that you can financially meet bond</p> <p>20 breach obligation and he can explain to you</p> <p>21 exactly why.</p> <p>22 MS. KATSANTONIS: I'm trying to find</p>

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<p>1 out what his present financial condition is.</p> <p>2 MR. WILLIAMS: Because he's met them</p> <p>3 all up to date.</p> <p>4 Q What is the aggregate value of -- so</p> <p>5 when you talked about the aggregate value of</p> <p>6 Nexus' interest and accounts receivable, in your</p> <p>7 2016 tax report --</p> <p>8 MR. HARRIS: No, balance sheet.</p> <p>9 Q Sorry, balance sheet, you had an amount</p> <p>10 for accounts receivable. Where was that derived</p> <p>11 from?</p> <p>12 A Can you point me to what you're talking</p> <p>13 about?</p> <p>14 Q No, I don't have that with me. I just</p> <p>15 want to know.</p> <p>16 A You're referring to a document that</p> <p>17 you're asking me to review but you're not telling</p> <p>18 me what the document is and you're not providing</p> <p>19 it to me? Is that what we're talking about</p> <p>20 because I'm not going to answer that if that's</p> <p>21 what we're talking about. That doesn't make any</p> <p>22 sense.</p>	<p>309</p> <p>1 quick. Do a quick bio break.</p> <p>2 Q Sure.</p> <p>3 THE VIDEOGRAPHER: We are going off the</p> <p>4 record at 18:28.</p> <p>5 (Recess taken.)</p> <p>6 THE VIDEOGRAPHER: We are back on the</p> <p>7 record at 18:58.</p> <p>8 BY MS. KATSANTONIS:</p> <p>9 Q Okay, Mr. Donovan, earlier today you</p> <p>10 testified regarding requests from Nexus to RLI</p> <p>11 with regard to pre-invoice disputes.</p> <p>12 A Right.</p> <p>13 Q And does the documents you're relying</p> <p>14 on you forwarded to your counsel and he forwarded</p> <p>15 to us, right?</p> <p>16 A The initial email from -- as I told you</p> <p>17 the email that I sent you was a base email from</p> <p>18 Juliana explaining the resolution dispute process.</p> <p>19 But there were several emails where she raised</p> <p>20 different cases.</p> <p>21 Q Well, are these all the emails you're</p> <p>22 relying on?</p>
<p>310</p> <p>1 Q Well, do you recall that prior to RLI</p> <p>2 executing bonds, they asked that Nexus provide a</p> <p>3 balance sheet?</p> <p>4 A I believe there was communication with</p> <p>5 Mr. Sandoz about a balance sheet, yes.</p> <p>6 Q And in that balance sheet, do you</p> <p>7 recall that it contained a number for accounts</p> <p>8 receivable?</p> <p>9 A I believe that balance sheet was an</p> <p>10 estimate and it was something that Mr. Sandoz was</p> <p>11 gracious enough to help us with. At that point in</p> <p>12 time in our infancy, we were not as sophisticated</p> <p>13 as we would have liked to have been and Mr. Sandoz</p> <p>14 was very helpful.</p> <p>15 Q So the values were just based on an</p> <p>16 estimate, is that what you're saying?</p> <p>17 A No. Well, I'm sure it was based on</p> <p>18 what the estimate of our AR was. If you'll look,</p> <p>19 I think in that balance sheet all of those numbers</p> <p>20 are like whole numbers.</p> <p>21 Q What?</p> <p>22 A I'm going to run to the restroom real</p>	<p>311</p> <p>1 A Well, that was one of the emails that I</p> <p>2 was relying on that I told you I would forward to</p> <p>3 counsel.</p> <p>4 Q There appears to be --</p> <p>5 A But, yes, I did forward this to</p> <p>6 Mr. Shoreman.</p> <p>7 Q Right. Well, are these all the emails</p> <p>8 you're relying on with regard to that testimony?</p> <p>9 A I believe there are other emails from</p> <p>10 Ms. Gutierrez that also seek disputes. So I think</p> <p>11 you have them. I think they've been produced</p> <p>12 already.</p> <p>13 Q So there's no other emails sitting here</p> <p>14 today that you can identify that support the</p> <p>15 contention that Nexus asked RLI to give an</p> <p>16 authorization for pre-invoice disputes but failed</p> <p>17 to do so?</p> <p>18 A That's literally the opposite of what</p> <p>19 my answer was. I told you that we had produced</p> <p>20 other emails and that there are other emails in</p> <p>21 production. We've produced a large number of</p> <p>22 emails.</p> <p>312</p>

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<p>313</p> <p>1 Q Okay. But sitting here --</p> <p>2 A So today I have given you this as an</p> <p>3 example. But it is not a full complement of.</p> <p>4 Q Okay. And do you have -- do you have</p> <p>5 an understanding of what the full complement of</p> <p>6 emails -- I think you said you thought you looked</p> <p>7 at five or six emails. And that's why I thought</p> <p>8 these were the five or six emails you had</p> <p>9 reviewed?</p> <p>10 A I think that -- yeah, I think the thing</p> <p>11 that you're maybe misunderstanding I understand.</p> <p>12 This is one email.</p> <p>13 Q But they're different dates on it,</p> <p>14 right?</p> <p>15 A No, it's true because there were</p> <p>16 attachments to it but what I meant is I reviewed</p> <p>17 multiple emails, right? So this is one of the</p> <p>18 emails that I reviewed.</p> <p>19 Q So do you recall a single instance</p> <p>20 where Nexus provided backup documentation and the</p> <p>21 facts to support a dispute?</p> <p>22 A I know -- I know that that occurred.</p>	<p>315</p> <p>1 They represented to me that those conversations</p> <p>2 occurred and I'm representing to you that that's</p> <p>3 my report based on the communication.</p> <p>4 Q And can you --</p> <p>5 A I will review records. I'll also talk</p> <p>6 to staff.</p> <p>7 Q But you can't provide a single example</p> <p>8 sitting here today?</p> <p>9 A At this point in time other than the</p> <p>10 email that I provided, no. But I'm more than</p> <p>11 happy to search -- I'm confident that,</p> <p>12 Ms. Katsantonis, that you already have that</p> <p>13 production.</p> <p>14 MS. KATSANTONIS: We're going to mark</p> <p>15 that email for the record, please.</p> <p>16 (Donovan Exhibit 15 marked for</p> <p>17 identification and attached to the transcript.)</p> <p>18 A You get a giant exhibit.</p> <p>19 MR. SHOREMAN: I would like mine on</p> <p>20 bigger paper, please.</p> <p>21 Q And you -- as we discussed before, are</p> <p>22 you aware that RLI requested Nexus to provide it</p>
<p>314</p> <p>1 Q How do you know that?</p> <p>2 A Because it was represented to me by</p> <p>3 Juliana Gutierrez by Erik Schneider.</p> <p>4 MR. SHOREMAN: Wait a second, Juliana</p> <p>5 is an attorney, correct?</p> <p>6 THE WITNESS: That's correct.</p> <p>7 MR. SHOREMAN: If you disclose</p> <p>8 conversation with an attorney you're waiving</p> <p>9 attorney-client privilege.</p> <p>10 THE WITNESS: Okay.</p> <p>11 Q Okay. So you didn't review any</p> <p>12 documents that supported that contention, is that</p> <p>13 correct?</p> <p>14 A I'm sorry?</p> <p>15 Q You didn't review any documents that --</p> <p>16 there were no documents that you reviewed or you</p> <p>17 saw where Nexus provided to RLI supporting</p> <p>18 documents for the bases for a pre-invoice dispute?</p> <p>19 A No. But based on conversations with my</p> <p>20 staff I know that those did occur. I had</p> <p>21 conversations with both Erik and before Juliana</p> <p>22 and I know that those conversations occurred.</p>	<p>316</p> <p>1 with backup documentation to substantiate any</p> <p>2 dispute, correct?</p> <p>3 A I'm aware that RLI did not seriously</p> <p>4 engage in the process of allowing us to dispute.</p> <p>5 I'm aware that RLI arbitrarily and capriciously</p> <p>6 denied our ability to dispute. And I'm aware that</p> <p>7 our fail rate with RLI is higher as a result of</p> <p>8 it.</p> <p>9 Q Based on what specific facts?</p> <p>10 MR. SHOREMAN: Asked and answered.</p> <p>11 A We have never been able to dispute an</p> <p>12 invoice -- a breach with RLI because you've never</p> <p>13 given us permission to.</p> <p>14 Q Hasn't RLI asked you appropriately for</p> <p>15 backup documentation prior to submitting a</p> <p>16 dispute?</p> <p>17 A My staff has told me that regardless of</p> <p>18 what information was provided, RLI was resistant</p> <p>19 to providing the authorization, every single time</p> <p>20 it was sought and it became obvious that it would</p> <p>21 never be granted.</p> <p>22 Q And you don't have any documentation,</p>

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<p>1 sitting here today, to support that, right?</p> <p>2 <b>A No more than I've already produced but</b></p> <p>3 <b>I'm happy to tell you that I'm sure it's in your</b></p> <p>4 <b>email production.</b></p> <p>5 MR. SHOREMAN: Would that be the email</p> <p>6 production that was made last week?</p> <p>7 THE WITNESS: That's correct.</p> <p>8 MR. SHOREMAN: I want to say for the</p> <p>9 record that Nexus has produced all of its emails</p> <p>10 at this point concerning RLI. So it will be in</p> <p>11 there.</p> <p>12 MR. HARRIS: I appreciate the</p> <p>13 representation, Mr. Shoreman, but one of our</p> <p>14 30(b)(6) topics was to have somebody confident and</p> <p>15 available to testify to the facts regarding any</p> <p>16 dispute that you contained that RLI didn't give</p> <p>17 authority to and so.</p> <p>18 MR. SHOREMAN: Where do you see that in</p> <p>19 there? Where do you see that?</p> <p>20 MR. HARRIS: We can discuss it off the</p> <p>21 record.</p> <p>22 MS. KATSANTONIS: Yeah, we can discuss</p>	<p>317</p> <p>1 Mr. Harris just represented, that he must be</p> <p>2 prepared to provide all backup documentation for</p> <p>3 Mr. Sussman's refusal to allow disputes.</p> <p>4 MS. KATSANTONIS: Mr. -- all the facts</p> <p>5 in --</p> <p>6 MR. SHOREMAN: If you see in there,</p> <p>7 just point it out to me.</p> <p>8 MS. KATSANTONIS: We're going to go off</p> <p>9 the record because I'm not going to waste my time</p> <p>10 with this. All the facts and circumstances that</p> <p>11 support his contentions that RLI acted in bad</p> <p>12 faith.</p> <p>13 MR. SHOREMAN: We have provided --</p> <p>14 MS. KATSANTONIS: Off the record. Off</p> <p>15 the record.</p> <p>16 THE WITNESS: Don't go off the record.</p> <p>17 MR. SHOREMAN: Don't go off the record.</p> <p>18 MS. KATSANTONIS: Then I'm going over</p> <p>19 as long as you take because I'm not going to spend</p> <p>20 my time with your argument.</p> <p>21 MR. SHOREMAN: I'm saying we provided</p> <p>22 you every email between RLI and Nexus.</p>
<p>318</p> <p>1 it off the record.</p> <p>2 MR. SHOREMAN: I want to see where you</p> <p>3 say in here that --</p> <p>4 MS. KATSANTONIS: Well, I'm going to</p> <p>5 tell you right now because Mr. Donovan is</p> <p>6 asserting that we acted arbitrarily and</p> <p>7 capriciously and that it was a basis for bad faith</p> <p>8 and so if it's a basis for bad faith then we're</p> <p>9 entitled to explore the bases of that.</p> <p>10 MR. SHOREMAN: Mr. Harris just said</p> <p>11 that there was a specific topic here for backup</p> <p>12 information for disputes.</p> <p>13 MS. KATSANTONIS: I don't want to waste</p> <p>14 my time on the record.</p> <p>15 Doesn't that cover it? The fact that</p> <p>16 Mr. Donovan is asserting that it was a basis for</p> <p>17 bad faith?</p> <p>18 MR. SHOREMAN: It is a basis for bad</p> <p>19 faith.</p> <p>20 MS. KATSANTONIS: Then let me continue</p> <p>21 my question.</p> <p>22 MR. SHOREMAN: It doesn't say here, as</p>	<p>319</p> <p>1 MS. KATSANTONIS: I don't know that's</p> <p>2 true, Mr. Shoreman, and it doesn't matter.</p> <p>3 MR. SHOREMAN: And we've provided you</p> <p>4 further emails today.</p> <p>5 MS. KATSANTONIS: Okay, we're not</p> <p>6 wasting any more time.</p> <p>7 MR. SHOREMAN: Well, ask a question</p> <p>8 then.</p> <p>9 Q Mr. Donovan --</p> <p>10 MR. HARRIS: Note in response --</p> <p>11 MR. SHOREMAN: Wait, wait, wait, wait.</p> <p>12 MR. HARRIS: Topic 4, last two Roman</p> <p>13 numeral at -- there's two i's there, which is</p> <p>14 inadvertent, but the last two specifically ask for</p> <p>15 this witness' knowledge and all the facts</p> <p>16 regarding instances where RLI allegedly did not.</p> <p>17 MR. SHOREMAN: All right. That's all I</p> <p>18 asked for. That's all I asked for. Thank you,</p> <p>19 Mr. Harris --</p> <p>20 MR. HARRIS: You're welcome.</p> <p>21 MR. SHOREMAN: -- for being so polite</p> <p>22 and courteous and cooperative.</p>

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Micheal Paul Donovan, Corporate Designee

81 (321 to 324)

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<p>1 Vivian, you can take --</p> <p>2 MS. KATSANTONIS: Okay. Reviewing --</p> <p>3 MR. HARRIS: The point for the record</p> <p>4 is that Mr. Donovan is not able to testify to the</p> <p>5 specific facts.</p> <p>6 MR. SHOREMAN: He can testify. He's</p> <p>7 given you email --</p> <p>8 MS. KATSANTONIS: I'm adding three</p> <p>9 minutes to my time. Okay. Three minutes added.</p> <p>10 MR. SHOREMAN: He's produced emails</p> <p>11 today and he's testifying about what he's learned</p> <p>12 from his staff. The idea that he cannot testify</p> <p>13 to this or has not testified to this is entirely</p> <p>14 false.</p> <p>15 MS. KATSANTONIS: Can we proceed,</p> <p>16 please?</p> <p>17 MR. SHOREMAN: Thanks to Mr. Harris you</p> <p>18 can.</p> <p>19 MS. KATSANTONIS: Okay.</p> <p>20 BY MS. KATSANTONIS:</p> <p>21 Q Reviewing the email we marked dated</p> <p>22 March 28th, 2018.</p>	<p>321</p> <p>1 earlier, if you need a second one there you go.</p> <p>2 MR. SHOREMAN: Which exhibit is this?</p> <p>3 16.</p> <p>4 MS. KATSANTONIS: I'm definitely adding</p> <p>5 four minutes.</p> <p>6 Q Okay. This is an email between</p> <p>7 Mr. Sussman and Juliana Gutierrez and you're</p> <p>8 copied on this email chain?</p> <p>9 <b>A I am.</b></p> <p>10 Q Okay. And do you see that</p> <p>11 Ms. Gutierrez advised Mr. Sussman we found an</p> <p>12 invoice under RLI that is disputable, do you see</p> <p>13 that?</p> <p>14 <b>A Yeah, I'm going to read this real</b></p> <p>15 <b>quick.</b></p> <p>16 Q Have you had an opportunity to review</p> <p>17 this?</p> <p>18 <b>A I've read Juliana's email which I agree</b></p> <p>19 <b>with. I'm just reading the top one now. So I've</b></p> <p>20 <b>read all of the document except this one. Yes,</b></p> <p>21 <b>I've read it.</b></p> <p>22 Q Okay. So Mr. Sussman requested</p>
<p>322</p> <p>1 Do you have a copy of that?</p> <p>2 <b>A I'm not sure. Let me see.</b></p> <p>3 Q Did I provide that to you?</p> <p>4 <b>A Also not sure.</b></p> <p>5 MS. KATSANTONIS: Off the record.</p> <p>6 <b>A Which email?</b></p> <p>7 Q Wait.</p> <p>8 <b>A Oh, it's --</b></p> <p>9 MS. KATSANTONIS: Wait, wait, wait.</p> <p>10 Sorry.</p> <p>11 (Donovan Exhibit 16 marked for</p> <p>12 identification and attached to the transcript.)</p> <p>13 Q I'm sorry, we both needed to stop</p> <p>14 talking.</p> <p>15 <b>A I understand, Vivian. It's a common</b></p> <p>16 <b>problem we have, the two of us.</b></p> <p>17 MR. SHOREMAN: May I have a copy of</p> <p>18 that. Am I in the doghouse so I don't get a copy</p> <p>19 of it?</p> <p>20 THE WITNESS: You don't even get copies</p> <p>21 anymore.</p> <p>22 MS. KATSANTONIS: I threw one at you</p>	<p>323</p> <p>1 documentation to substantiate Nexus' desire to</p> <p>2 challenge the invoice, right?</p> <p>3 <b>A It does appear that he did that, yes.</b></p> <p>4 Q Right. And Ms. Gutierrez's answer</p> <p>5 didn't provide the backup documentation, right?</p> <p>6 <b>A I think Gutierrez's answer is based on</b></p> <p>7 <b>an understanding of these situations and maybe</b></p> <p>8 <b>Mr. Sussman's isn't. There is -- what would one</b></p> <p>9 <b>produce, right? So you have an ICE officer who</b></p> <p>10 <b>remanded the person. There's a remand record,</b></p> <p>11 <b>right? So --</b></p> <p>12 Q You didn't provide that.</p> <p>13 <b>A No, no, no. Hold on a second. We</b></p> <p>14 <b>wouldn't necessarily have it but certainly the</b></p> <p>15 <b>federal government would. So when we say we want</b></p> <p>16 <b>to file this protest, or this dispute.</b></p> <p>17 Q Right?</p> <p>18 <b>A It's because the government knows that</b></p> <p>19 <b>he was -- that he was remanded on December 1st and</b></p> <p>20 <b>that that information is absolutely available to</b></p> <p>21 <b>the government. So a paragraph that recites those</b></p> <p>22 <b>facts when the government can verify them may well</b></p> <p>324</p>

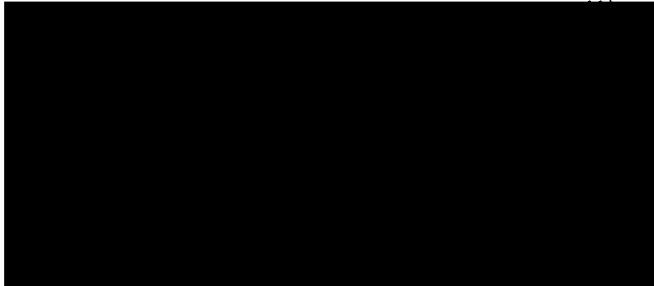
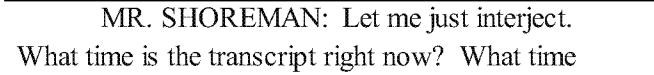

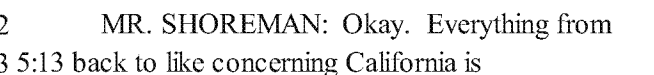

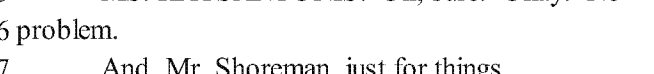
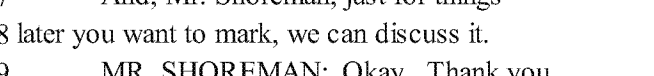
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<p>325</p> <p>1 be enough and we may not have a body receipt on</p> <p>2 the person.</p> <p>3 Q Mr. Donovan, certainly Mr. Sussman's</p> <p>4 email says my concern is you haven't provided</p> <p>5 anything to substantiate us -- to substantiate or</p> <p>6 provide us with backup document.</p> <p>7 A We provided the dates.</p> <p>8 Q And he says --</p> <p>9 A And he's asking for a copy of the past</p> <p>10 due invoice, we get those from you.</p> <p>11 Q What evidence are you going to submit</p> <p>12 to prove that the individual showed up, right? He</p> <p>13 asked for that, right?</p> <p>14 A Right. You have the date and the time</p> <p>15 and the individuals that were there with them. I</p> <p>16 mean, the government certainly would have a record</p> <p>17 of his remand.</p> <p>18 Q Ms. Juliana Gutierrez didn't respond</p> <p>19 providing --</p> <p>20 A I don't have any response.</p> <p>21 Q -- what her challenge was, right?</p> <p>22 A I don't know if she responded to this</p>	<p>327</p> <p>1 Q That's great, Mr. Donovan. So this</p> <p>2 letter is what you think constitutes bad faith on</p> <p>3 the part of RLI?</p> <p>4 A This letter is one --</p> <p>5 Q Is that correct?</p> <p>6 A -- one small example of the mountain of</p> <p>7 bad faith that RLI has brought to this deal,</p> <p>8 absolutely. You have all the facts in this email</p> <p>9 from Juliana Gutierrez, a member of the bar,</p> <p>10 right?</p> <p>11 Q Right.</p> <p>12 A You have all the facts and Mr. Sussman</p> <p>13 doesn't care. Doesn't care about the fact that</p> <p>14 Nexus is going to have to pay the 10,000 versus</p> <p>15 the 3400? Why does Mr. Sussman not care? Because</p> <p>16 it's not his money. That's bad faith.</p> <p>17 Q Okay. Thank you.</p> <p>18 A You're welcome.</p> <p>19 Q And with regard to Nexus' financials,</p> <p>20 what lines of credit are available to Nexus to</p> <p>21 finance its operation other than credit cards?</p> <p>22 A We have cash flow assets, we utilize</p>
<p>326</p> <p>1 email.</p> <p>2 Q Right. And Mr. Sussman asked send me</p> <p>3 what you're proposing to send to the government,</p> <p>4 right? He asked her to do that as well, right?</p> <p>5 A I think that Ms. Gutierrez provided</p> <p>6 information sufficient in any -- in a layperson's</p> <p>7 mind to be able to challenge this for sure. But</p> <p>8 certainly sufficient for the government to</p> <p>9 understand because there are dates on which this</p> <p>10 person was remanded.</p> <p>11 Q Do you know --</p> <p>12 A And what I see is Mr. Sussman being</p> <p>13 incredibly unreasonable understanding that we have</p> <p>14 the facts and he's just not granting us the</p> <p>15 authority to -- to be able to get those facts to</p> <p>16 the right person so that we could have that loss</p> <p>17 mitigated. This is why our breach rate is so high</p> <p>18 with RLI. This email proves it. This is exactly</p> <p>19 what we've been dealing with. I'm glad you're</p> <p>20 bringing this into the record.</p> <p>21 Q That's great.</p> <p>22 A This is awesome. Thank you.</p>	<p>328</p> <p>1 our cash flow. We have --</p> <p>2 Q You mean cash flow from --</p> <p>3 A We have an American Express account and</p> <p>4 we utilize the American Express account on a</p> <p>5 monthly basis.</p> <p>6 Q Okay. So when you say cash flow you're</p> <p>7 talking about payments made by program</p> <p>8 participants, right?</p> <p>9 A Exactly.</p> <p>10 Q So the assets that you have, the</p> <p>11 revenue streams that you have are payments from</p> <p>12 program participants and then you have a credit</p> <p>13 card, American Express?</p> <p>14 A Well, and the Home -- Homes revenue,</p> <p>15 the income revenue.</p> <p>16 Q Okay. And has -- is the revenue stream</p> <p>17 from program participants, has it been consistent</p> <p>18 in 2017, '18, and '19, or has it gone up or down?</p> <p>19 A The amount of payments that are</p> <p>20 collected from program participants has gone up.</p> <p>21 I have a KPI here that's the most recent KPI which</p> <p>22 I will give you.</p>

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<p>329</p> <p>1 Q Okay, thank you.</p> <p>2 A <b>You're welcome.</b></p> <p>3 Q And then -- and you can show me what</p> <p>4 those are. What was it for 2019?</p> <p>5 A Well, sure, for example this is --</p> <p>6 well, the document I have in front of me is 2020.</p> <p>7 And so like for February, for example, we're</p> <p>8 113 percent to our comp performance in payments</p> <p>9 from clients.</p> <p>10 So which, you know, makes sense because</p> <p>11 as your client base grows your payment base grows</p> <p>12 as well.</p> <p>13 Q And how, if at all, is the cease and</p> <p>14 desist order from California going to impact that</p> <p>15 revenue stream?</p> <p>16 A Well, good news. I took the time to go</p> <p>17 out to California and meet with the folks from the</p> <p>18 insurance commissioner's office and we're working</p> <p>19 diligently to solve that problem. The good news</p> <p>20 is that Libre continues to do business in</p> <p>21 California under a modified business model.</p> <p>22 Q Until April?</p>	<p>331</p> <p>1 </p> <p>2 </p> <p>3 </p> <p>4 </p> <p>5 </p> <p>6 </p> <p>7 </p> <p>8 MR. SHOREMAN: Let me just interject.</p> <p>9 What time is the transcript right now? What time</p> <p>10 is it on the transcript?</p> <p>11 THE VIDEOGRAPHER: We're at 5:13.</p> <p>12 MR. SHOREMAN: Okay. Everything from</p> <p>13 5:13 back to like concerning California is</p> <p>14 confidential.</p> <p>15 MS. KATSANTONIS: Oh, sure. Okay. No</p> <p>16 problem.</p> <p>17 And, Mr. Shoreman, just for things</p> <p>18 later you want to mark, we can discuss it.</p> <p>19 MR. SHOREMAN: Okay. Thank you.</p> <p>20 Q Okay. What about what is the aggregate</p> <p>21 amount of Nexus' outstanding liabilities?</p> <p>22 A <b>The aggrate amount of Nexus'</b></p>
<p>330</p> <p>1 A <b>And we're --</b></p> <p>2 MR. SHOREMAN: Wait.</p> <p>3 A <b>You seem excited about this. I'm</b></p> <p>4 <b>actually excited that we're going to be resolving</b></p> <p>5 <b>this and other issues. We are working with</b></p> <p>6 <b>regulators when there are issues and trying to</b></p> <p>7 <b>resolve them, just like we did Washington State.</b></p> <p>8 MR. SHOREMAN: Let me just say that you</p> <p>9 interjected and said to April. And didn't give</p> <p>10 him a chance to answer.</p> <p>11 MS. KATSANTONIS: I know. I'm going to</p> <p>12 ask, you're right. And I apologize.</p> <p>13 Q You know, the motion to stay, or the</p> <p>14 stay order, provides a stay through April,</p> <p>15 correct, of 2020?</p> <p>16 A <b>The cease and desist -- the modified</b></p> <p>17 <b>cease and desist under our old business model</b></p> <p>18 <b>would expire in April, yes.</b></p> <p>19 Q Right. And so my question is how is --</p> <p>20 do you have an understanding as to how that's</p> <p>21 going to -- after April 2020 -- impact the revenue</p> <p>22 stream to Nexus?</p>	<p>332</p> <p>1 <b>outstanding liabilities in total?</b></p> <p>2 Q Uh-huh, yes.</p> <p>3 A <b>I believe I have a digital copy of our</b></p> <p>4 <b>aging report which I will also produce if I can</b></p> <p>5 <b>get my phone out of my pocket.</b></p> <p>6 Q I can provide you with one,</p> <p>7 Mr. Donovan, I don't know if that's the same.</p> <p>8 MR. SHOREMAN: We can go off the record</p> <p>9 while Vivian's looking for that and let you know</p> <p>10 that Virginia went for Biden.</p> <p>11 MS. KATSANTONIS: Off the record.</p> <p>12 THE VIDEOGRAPHER: We're going off the</p> <p>13 record at 19:19.</p> <p>14 (Recess taken.)</p> <p>15 THE VIDEOGRAPHER: We are back on the</p> <p>16 record at 19:21.</p> <p>17 BY MS. KATSANTONIS:</p> <p>18 Q What is the current aggregate amount of</p> <p>19 Nexus outstanding liability?</p> <p>20 A <b>It is \$5,250,415.14.</b></p> <p>21 Q And from where are you deriving that</p> <p>22 information?</p>

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<p>333</p> <p>1 <b>A Our most recent aging report.</b></p> <p>2 Q Okay. And does that include any</p> <p>3 disputed liability?</p> <p>4 <b>A It includes some liability with Buddi</b></p> <p>5 <b>that is device related, so when those devices are</b></p> <p>6 <b>returned that won't actually be money that's paid.</b></p> <p>7 <b>It's related to the value of the device.</b></p> <p>8 Q Okay. Are there any other disputed</p> <p>9 liabilities that are not included in that number?</p> <p>10 <b>A We have a balance with -- a contested</b></p> <p>11 <b>or disputed balance with 3M Attenti that's not on</b></p> <p>12 <b>here.</b></p> <p>13 Q Uh-huh. And how much is that,</p> <p>14 approximately?</p> <p>15 <b>A I do not -- we do not have a bill. I</b></p> <p>16 <b>wasn't able to place my hands on a bill for</b></p> <p>17 <b>Attenti related to what we've -- what it is now</b></p> <p>18 <b>that we've returned hundreds of devices, right?</b></p> <p>19 <b>So it was -- it was a, I think a \$2 million</b></p> <p>20 <b>balance but we've returned thousands of devices</b></p> <p>21 <b>and those are, you know, significant value per</b></p> <p>22 <b>device. So I'll have to -- but I'll certainly</b></p>	<p>335</p> <p>1 <b>significant cost when you consider the fact that</b></p> <p>2 <b>we're traveling clients and employees, and, you</b></p> <p>3 <b>know, rents. We have offices across the country</b></p> <p>4 <b>where we serve people. So when you're operating a</b></p> <p>5 <b>multiunit operation across the United States, it</b></p> <p>6 <b>can get very expensive just to run the business.</b></p> <p>7 Q Does Nexus have any outstanding</p> <p>8 promissory note liabilities?</p> <p>9 <b>A Only insofar as each of our contracts</b></p> <p>10 <b>with FCS include a promissory note provision on</b></p> <p>11 <b>the bond indemnification agreement unlike the</b></p> <p>12 <b>general indemnity agreement, so, you know, just</b></p> <p>13 <b>parking lot that. Otherwise, no.</b></p> <p>14 Q Do you know the total of how much Nexus</p> <p>15 owes on outstanding, like, mortgages, loans, or</p> <p>16 other real estate transactions?</p> <p>17 <b>A I think I might. How exciting.</b></p> <p>18 Q While you're looking for that, does</p> <p>19 McGuireWoods have unpaid invoices outstanding with</p> <p>20 Nexus?</p> <p>21 <b>A Yes.</b></p> <p>22 Q How much?</p>
<p>334</p> <p>1 <b>find out and I'll update you.</b></p> <p>2 <b>I can give you the amount that we</b></p> <p>3 <b>currently have but I'll give you the updated one.</b></p> <p>4 Q Does that amount include outstanding</p> <p>5 invoices for bond breaches?</p> <p>6 <b>A So we -- we consider -- let me just</b></p> <p>7 <b>check something real quick.</b></p> <p>8 <b>So bond breach liability is not here.</b></p> <p>9 Q Okay. And what is the aggregate amount</p> <p>10 of bond breach invoices outstanding now?</p> <p>11 <b>A I will get that to you before I leave,</b></p> <p>12 <b>okay?</b></p> <p>13 Q Okay.</p> <p>14 <b>A Before you let me go.</b></p> <p>15 Q And do you -- other than the bond</p> <p>16 breach invoices, what are Nexus' five largest</p> <p>17 categories of liability, if you know generally?</p> <p>18 <b>A You're not going to score me on whether</b></p> <p>19 <b>I rank them in order, right?</b></p> <p>20 Q Right?</p> <p>21 <b>A Payroll is a significant cost. GPS</b></p> <p>22 <b>cost would be a significant cost, travel is a very</b></p>	<p>336</p> <p>1 <b>A It looks like -- you want an exact</b></p> <p>2 <b>number because I'm going to have to --</b></p> <p>3 Q No, roundabout.</p> <p>4 <b>A Okay. So roughly the \$220,000.</b></p> <p>5 Q What about Eckert Seaman?</p> <p>6 <b>A Eckert Seaman is about 550,000, but</b></p> <p>7 <b>that's about a month and a half of this litigation</b></p> <p>8 <b>cost so that's not a lot at the time.</b></p> <p>9 Q Does Nexus currently have sufficient</p> <p>10 assets to satisfy its current liabilities?</p> <p>11 <b>A It does.</b></p> <p>12 Q Is Nexus currently without sufficient</p> <p>13 liquid assets to pay off its liabilities to Buddi?</p> <p>14 <b>A It does not.</b></p> <p>15 Q You do not have sufficient liquid</p> <p>16 assets to pay off your liabilities to Buddi?</p> <p>17 <b>A My liabilities to Buddi include devices</b></p> <p>18 <b>which we wouldn't pay for, we would either return</b></p> <p>19 <b>and then get credit for. So we are able to meet</b></p> <p>20 <b>our obligations to Buddi and the arrangements that</b></p> <p>21 <b>we've made with Buddi.</b></p> <p>22 Q Is Nexus currently without sufficient</p>

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<p>337</p> <p>1 liquid assets to pay all outstanding bond breach</p> <p>2 invoices?</p> <p>3 <b>A We are not without sufficient assets.</b></p> <p>4 <b>It's a weird way to ask that question. Let me</b></p> <p>5 <b>make sure. We have sufficient assets to pay bond</b></p> <p>6 <b>breaches.</b></p> <p>7 Q How do you know you have sufficient</p> <p>8 liquid assets to pay all outstanding bond breach</p> <p>9 invoices?</p> <p>10 <b>A Based on our KPI, our understanding of</b></p> <p>11 <b>the revenue that we're collecting, past</b></p> <p>12 <b>performance, it is – this company has paid</b></p> <p>13 <b>\$11 million plus in bond breaches and we will pay</b></p> <p>14 <b>breaches as we need to pursuant to the agreements</b></p> <p>15 <b>we have. Just as we always have.</b></p> <p>16 Q But you don't have an understanding as</p> <p>17 to what your liquid assets are sitting here today,</p> <p>18 correct?</p> <p>19 <b>A I don't have the specifics, the level</b></p> <p>20 <b>of which I would like and the level of which I'm</b></p> <p>21 <b>sure you would like. But I am confident in our</b></p> <p>22 <b>ability to meet our liabilities.</b></p>	<p>339</p> <p>1 <b>A Various.</b></p> <p>2 (Donovan Exhibit 17 marked for</p> <p>3 identification and attached to the transcript.)</p> <p>4 <b>Q Yes. And under the indemnity</b></p> <p>5 <b>agreement, paragraph 3C, you understand that RLI</b></p> <p>6 <b>has the right to access the books, records, and</b></p> <p>7 <b>accounts of the indemnitors for examining and</b></p> <p>8 <b>copying them, correct?</b></p> <p>9 <b>A Yes.</b></p> <p>10 Q Okay. And RLI made further demand on</p> <p>11 March 3rd, 2017.</p> <p>12 Do you recall that?</p> <p>13 <b>A Further demand for access to books,</b></p> <p>14 <b>records, and accounts?</b></p> <p>15 Q Right?</p> <p>16 <b>A I don't remember it specifically but</b></p> <p>17 <b>I'm sure it happened. There were several requests</b></p> <p>18 <b>and conversations about confidentiality, as you</b></p> <p>19 <b>may remember. Are we marking this?</b></p> <p>20 Q Yes, thank you.</p> <p>21 <b>A It feels warmer so thank you.</b></p> <p>22 <b>Appreciate it. I was getting a little worried, I</b></p>
<p>338</p> <p>1 Q Do you have an order of magnitude as to</p> <p>2 what your current liquid assets are?</p> <p>3 <b>A Well, I answered pursuant to the</b></p> <p>4 <b>balance sheet earlier, and I think that I'm going</b></p> <p>5 <b>to reassert that answer because it's based on the</b></p> <p>6 <b>documents that I have, right? So I read you the</b></p> <p>7 <b>assets based on the balance sheet, the 2019</b></p> <p>8 <b>balance sheet.</b></p> <p>9 Q But you also said that that balance</p> <p>10 sheet was not accurate.</p> <p>11 <b>A I said that it was being reconciled,</b></p> <p>12 <b>right? We were talking about assets. You asked</b></p> <p>13 <b>me about assets –</b></p> <p>14 Q You can't -- you can't rely on that</p> <p>15 balance sheet, can you?</p> <p>16 <b>A I don't rely on that balance sheet to</b></p> <p>17 <b>tell me what -- whether I can meet our liabilities</b></p> <p>18 <b>or not. You asked a very base -- a very specific</b></p> <p>19 <b>question and I'm providing a very specific answer.</b></p> <p>20 Q Okay. RLI throughout -- since 2016 to</p> <p>21 the present, has made various requests for access</p> <p>22 to Nexus' books, records, and accounts, correct?</p>	<p>340</p> <p>1 <b>was really cold.</b></p> <p>2 Q So this is a March 3rd letter written</p> <p>3 to you, or to Nexus, from RLI, correct?</p> <p>4 <b>A That is correct.</b></p> <p>5 Q And in this, RLI expresses concerns,</p> <p>6 some of which they summarize below, right? And we</p> <p>7 went through this letter in your deposition last</p> <p>8 week, right?</p> <p>9 <b>A Did we?</b></p> <p>10 Q Yes.</p> <p>11 <b>A Okay.</b></p> <p>12 Q And do you recall that RLI requested to</p> <p>13 review financial documents and other documents</p> <p>14 related to the immigration bond program in this</p> <p>15 letter, correct?</p> <p>16 <b>A That is in the letter, yes, ma'am.</b></p> <p>17 Q And RLI advised that it appreciated</p> <p>18 your attention -- it appreciated your attention to</p> <p>19 this urgent matter and asked for a response by</p> <p>20 March 10th, right?</p> <p>21 <b>A That seems to be correct, yes.</b></p> <p>22 Q Okay. And on March 6th, RLI followed</p>

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<p>1 up with an email to Nexus, again requesting a 2 response to the letter of March 3rd, correct? 3 Do you recall that? 4 <b>A Do you have that?</b> 5 <b>Q Yep?</b> 6 <b>A So I can review it. Do you want to</b> 7 <b>enter it?</b> 8 <b>Q Sure.</b> 9 <b>A Okay.</b> 10 (Donovan Exhibit 18 marked for 11 identification and attached to the transcript.) 12 <b>Q And RLI requested a response by</b> 13 <b>March 10th, again, in their email of March 6th,</b> 14 <b>correct?</b> 15 <b>A Yeah. I think this is the Friday to</b> 16 <b>Monday, right? This is what we had talked about</b> 17 <b>in my prior deposition. So if you sent an email</b> 18 <b>on Friday and you sent a follow-up email on</b> 19 <b>Monday. I believe that March 6, 2017 was a</b> 20 <b>Monday. I believe that the first email came in on</b> 21 <b>a Friday, which from a workday perspective is</b> 22 <b>literally the next day.</b></p>	<p>1 <b>A What I'm saying is I didn't find any</b> 2 <b>response so I'm confirming that.</b> 3 <b>Q Thank you.</b> 4 <b>A Of course. I'm assuming we're marking</b> 5 <b>this.</b> 6 <b>Q Yes?</b> 7 <b>A I'm assuming you'll tell me we're not</b> 8 <b>if we're not.</b> 9 <b>Q Thank you.</b> 10 <b>A You're welcome.</b> 11 (Donovan Exhibit 19 marked for 12 identification and attached to the transcript.) 13 <b>Q So this March 13th, 2017 we talked</b> 14 <b>about this in your deposition as well, this was a</b> 15 <b>demand for bond discharge or collateral?</b> 16 <b>A Yes.</b> 17 <b>Q Okay. And do you recall that in this</b> 18 <b>letter, RLI advised you that it -- that Nexus had</b> 19 <b>not responded, correct?</b> 20 <b>A I want to review this real quick, it's</b> 21 <b>only two pages and I don't -- you know, the other</b> 22 <b>email I remembered but I want to make sure -- this</b></p>
<p>1 <b>Q But my question is in the March 6th</b> 2 <b>email that he is again reiterating his request for</b> 3 <b>response by March 10th, right, by the Friday?</b> 4 <b>A By Friday. It mentions Friday.</b> 5 <b>Q Yeah?</b> 6 <b>A So that would be --</b> 7 <b>Q March 10th?</b> 8 <b>A Yeah.</b> 9 <b>Q And Nexus did not respond, correct?</b> 10 <b>A I'm not sure if there was a response.</b> 11 <b>I don't know if I spoke to Ira or not after that.</b> 12 <b>I know I spoke to him on the phone. I think the</b> 13 <b>first letter references our phone call.</b> 14 <b>Q You don't recall that?</b> 15 <b>A I don't know that anyone spoke to him</b> 16 <b>between the March 6th letter and the 10th. I</b> 17 <b>certainly don't recollect speaking to him myself</b> 18 <b>personally. I have no record of anybody in the</b> 19 <b>company doing it.</b> 20 <b>Q Right. We talked about it at your</b> 21 <b>deposition, right? There was no response so RLI</b> 22 <b>issued a March 13th letter, correct?</b></p>	<p>1 <b>quotes the GIA so I want to make sure I understand</b> 2 <b>what it's saying.</b> 3 <b>Q Okay. So Nexus advised in this letter</b> 4 <b>that, first of all, it had received no response at</b> 5 <b>all from Nexus, correct?</b> 6 <b>A That's what it says.</b> 7 <b>Q Right. And it also advised that Nexus</b> 8 <b>had stopped communicating altogether with RLI's</b> 9 <b>claim personnel, correct?</b> 10 <b>A Yeah. But I would caution you. It's</b> 11 <b>March 3rd through March 13th. We're talking about</b> 12 <b>a 10-day window. I think that given the fact that</b> 13 <b>RLI did business with us for a year and</b> 14 <b>Mr. Sussman never bothered to talk to us having</b> 15 <b>the communication go from where it went on</b> 16 <b>March 3rd to March 13th is, I think, and</b> 17 <b>additional element of, you know, question of RLI's</b> 18 <b>behavior.</b> 19 <b>Q Okay. Well, RLI's advising you that</b> 20 <b>there has been no communication with RLI's claim</b> 21 <b>personnel, correct?</b> 22 <b>A That's what it says.</b></p>

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<p>1 Q All right. And that there had been 2 increased bond breach notices, correct? 3 <b>A That's what it says.</b> 4 Q And including past due notices, 5 correct? 6 <b>A That's what it says.</b> 7 Q And that it had received some 8 contradictory representations regarding past and 9 ongoing resolution of bond claims, correct? 10 <b>A I have no idea what that's referring</b> 11 <b>to.</b> 12 Q Well, but you see it says that's RLI's 13 contention, right? 14 <b>A Right. RLI's contention in this</b> 15 <b>document is ridiculous. I mean, it misstates the</b> 16 <b>indemnity agreement, misstates the -- it's a</b> 17 <b>ridiculous demand but I don't know what it was</b> 18 <b>referring to in that regard, no.</b> 19 Q Okay. Where -- 20 <b>A Like, for example, he says in the third</b> 21 <b>paragraph, "Please note that under this provision,</b> 22 <b>RLI is expressly entitled to demand and receive</b></p>	<p>345 1 <b>telling me stop it. I was like wait a second.</b> 2 Q I'm just saying under this letter RLI 3 advised you, right, that, again, that they 4 believed Nexus was a material breach, right? 5 <b>A It says that, yeah.</b> 6 Q And that Nexus had stopped 7 communicating, correct? 8 <b>A Over a period of 10 days it appears</b> 9 <b>that. It doesn't specify what the communication</b> 10 <b>period was. This letter started on March 3rd and</b> 11 <b>end on March 13th in a full demand. So it's 10</b> 12 <b>days. I don't know. We had a yearlong working</b> 13 <b>relationship and in 10 days everything blows up.</b> 14 <b>It doesn't make any sense.</b> 15 Q And RLI advised that they're receiving 16 bond claims at an alarmingly increasing rate, 17 correct? 18 <b>A Yes, but this hadn't lost any money and</b> 19 <b>still haven't.</b> 20 Q Okay. And do you know how many bond 21 breaches or bond breach notices RLI had received 22 as of this date?</p>
<p>346 1 <b>from Nexus collateral an 'sufficient to cover all</b> 2 <b>exposure."</b> 3 <b>That's not what it says. It says</b> 4 <b>amount sufficient to cover all exposure under such</b> 5 <b>bond or bonds, what bonds, the ones that create a</b> 6 <b>liability for the surety, a claim.</b> 7 Q Mr. Donovan? 8 <b>A Those would be breaches, right?</b> 9 Q Okay? 10 <b>A So that's not \$10 million. We've never</b> 11 <b>had \$10 million in breaches with RLI and we</b> 12 <b>certainly didn't when this demand was made.</b> 13 Q Mr. Donovan, you -- I don't need your 14 testimony with regard to the -- let me just -- 15 <b>A It's my testimony, Ms. Katsantonis.</b> 16 Q No, no, no. Let me just -- stop that. 17 <b>A I'm sorry.</b> 18 Q Excuse me, it's me, it's not my 19 question. 20 <b>A I mean.</b> 21 Q No, I'm rephrasing my question. 22 <b>A I got you. Okay. I thought you were</b></p>	<p>347 1 <b>A All I can reference is what Mr. Sussman</b> 2 <b>writes in his letter. I can pull -- he references</b> 3 <b>I think what's fixed. But I don't know.</b> 4 MS. KATSANTONIS: I'm going to mark 5 this. 6 (Donovan Exhibit 20 marked for 7 identification and attached to the transcript.) 8 Q It's an email dated March 15th from you 9 to Mr. Sussman. 10 <b>A Yes.</b> 11 Q Okay. And is that your email, correct? 12 <b>A It is. It's an email I wrote when I</b> 13 <b>was under the impression that Laura Piispanen was</b> 14 <b>honest in her email communications. I later</b> 15 <b>regretted that.</b> 16 Q Mr. Donovan, you stated in your 17 contemporaneous email of March 15th, 2017, that 18 you owed RLI an apology, correct? 19 <b>A That's right. I had relied on</b> 20 <b>Laura Piispanen's representations about</b> 21 <b>communication with our risk management department</b> 22 <b>which I acknowledged to Ira was unacceptable. I</b></p>

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Micheal Paul Donovan, Corporate Designee

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<p>349</p> <p>1 later learned that there were communications that</p> <p>2 Ms. Piispanen wasn't necessarily fully honest in</p> <p>3 her emails and I began to see a -- the fact that</p> <p>4 my team had been trying to communicate and the 10</p> <p>5 days between March 3rd and March 13th and the</p> <p>6 absolute, you know --</p> <p>7 Q Mr. Donovan?</p> <p>8 A It doesn't even make any sense what RLI</p> <p>9 did from March 3rd to March 13th.</p> <p>10 Q Mr. Donovan, in RLI's letter they</p> <p>11 weren't talking about a 10-day period, right?</p> <p>12 They didn't cite a time period of when there had</p> <p>13 been a lack of communication, right?</p> <p>14 A The 10-day period, Ms. Katsantonis, is</p> <p>15 all about what you've put into the record. You</p> <p>16 said there's an email on March 3rd, all the way up</p> <p>17 to March 13th and there are several</p> <p>18 communications there. And what I'm saying is we</p> <p>19 had a yearlong relationship where everything was</p> <p>20 fine.</p> <p>21 Q Mr. Donovan?</p> <p>22 A And when RLI stopped receiving daily</p>	<p>351</p> <p>1 A That's correct.</p> <p>2 Q And you didn't ask anybody else.</p> <p>3 A I assume that Laura and Ira were being</p> <p>4 honest.</p> <p>5 Q Okay.</p> <p>6 A My mistake.</p> <p>7 Q Okay. And so are you saying that --</p> <p>8 well --</p> <p>9 A I'm saying that my team says something</p> <p>10 different than your team -- than your client's</p> <p>11 team does.</p> <p>12 Q You don't have a letter from your team</p> <p>13 saying oh, my gosh, I did further investigation</p> <p>14 and we had been in communication -- communicating</p> <p>15 with you, right?</p> <p>16 A Because after this we, the relationship</p> <p>17 with RLI spiraled. We started having</p> <p>18 conversations about providing documents, access to</p> <p>19 records. We wanted to provide --</p> <p>20 Q Let's just say no --</p> <p>21 A -- access to our records.</p> <p>22 Q We have limited time, Mr. Donovan.</p>
<p>350</p> <p>1 premium everything blew up within 10 days. It</p> <p>2 doesn't make any sense.</p> <p>3 Q Let me ask you a question. In your</p> <p>4 March 15th email, you're agreeing at this time</p> <p>5 that there had been no communications between your</p> <p>6 branch manager and Laura since January 31st,</p> <p>7 correct?</p> <p>8 A That's what I -- I relied on those</p> <p>9 representations, yes.</p> <p>10 Q Whose representations?</p> <p>11 A Laura's representations.</p> <p>12 Q And when did Laura tell you that she</p> <p>13 had no communication since January 31st?</p> <p>14 A Laura did communicate to me that she</p> <p>15 had no communications and I'm speaking personally</p> <p>16 here but I did have a conversation with Laura</p> <p>17 around and about that time --</p> <p>18 Q So you're --</p> <p>19 A -- where she did tell me that she did</p> <p>20 not have communications with our --</p> <p>21 Q Your investigation was just to ask</p> <p>22 Laura?</p>	<p>352</p> <p>1 A We wanted to provide access to our</p> <p>2 records, we asked you to sign a confidentiality</p> <p>3 agreement, we asked RLI to sign a confidentiality</p> <p>4 agreement.</p> <p>5 Q Mr. Donovan?</p> <p>6 A We are now providing records pursuant</p> <p>7 to the court order --</p> <p>8 Q All right, Mr. Donovan, please just</p> <p>9 answer my question or --</p> <p>10 A You could have agreed to the</p> <p>11 confidentiality agreement, we could have had these</p> <p>12 documents shared in 2017. That's my point.</p> <p>13 Q Okay. Mr. Donovan.</p> <p>14 So you also provided some data in</p> <p>15 response to some of the bond breach notices that</p> <p>16 had been received, right?</p> <p>17 A It appears that way, yes.</p> <p>18 Q So you agree that RLI was not</p> <p>19 unreasonable in its assertion that Nexus had</p> <p>20 stopped communicating, right?</p> <p>21 A When I believed Ira and Laura's</p> <p>22 representations, yes.</p>

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<p>353</p> <p>1 Q Okay. And you agree that RLI was not</p> <p>2 wrong that Nexus did not respond to its March 3rd</p> <p>3 letter, correct?</p> <p>4 MR. SHOREMAN: Objection. Question</p> <p>5 has --</p> <p>6 A No, I -- I'm sorry. We're talking</p> <p>7 about 10 days, right? I was apologizing for a</p> <p>8 lack of communication that I was represented -- it</p> <p>9 was represented to me occurred. And so that's</p> <p>10 what I apologized for. And you know what, that's</p> <p>11 what professionals do. You have a -- there is</p> <p>12 a -- there is a problem here with communication.</p> <p>13 I now believe that the problem lied with as much</p> <p>14 as with your client as it did with my team. But</p> <p>15 you know, a professional says hey we're going to</p> <p>16 restart this. Let's go. And so what I did is I</p> <p>17 said Ira, look, I'm sorry if you're upset. I'm</p> <p>18 sorry that this happened but let's figure out a</p> <p>19 way to move forward. That's what professionals</p> <p>20 do.</p> <p>21 Q All I'm asking you, Mr. Donovan, is at</p> <p>22 the time you agreed it was not unreasonable that</p>	<p>355</p> <p>1 Q And you also agree that there are bond</p> <p>2 claims being sent by DHS during this time frame in</p> <p>3 January, February, and March of 2017?</p> <p>4 A Sure. That's the nature of the --</p> <p>5 Q Okay.</p> <p>6 A -- the program, some people are going</p> <p>7 to breach.</p> <p>8 Q So you made another comment and I want</p> <p>9 to make sure I understand it. Are you saying that</p> <p>10 RLI did not communicate with Nexus with regard to</p> <p>11 the bond program throughout 2016?</p> <p>12 A I'm saying that none of the concerns</p> <p>13 that RLI raised in March of 2017 were raised to us</p> <p>14 during the process of. There was never a question</p> <p>15 of whether we would have to post \$10 million in</p> <p>16 collateral. As you well know from my prior</p> <p>17 deposition, RLI had asked for 1.25 million in</p> <p>18 collateral or find another surety. We did</p> <p>19 everything RLI asked us to do every step of the</p> <p>20 way. The most ridiculous thing about this</p> <p>21 litigation is we continue to do everything RLI ask</p> <p>22 us to do and yet we continue to be hit for it,</p>
<p>354</p> <p>1 Nexus -- for RLI to assert that Nexus had stopped</p> <p>2 communicating. You agreed with that, correct?</p> <p>3 MR. SHOREMAN: Asked and answered.</p> <p>4 A Based on the miscommunication I had</p> <p>5 received from Laura, yes. And I now know that</p> <p>6 wasn't true.</p> <p>7 Q And you also agree that RLI was not</p> <p>8 wrong in stating that Nexus had not responded to</p> <p>9 it's critical letter dated March 3rd?</p> <p>10 A I don't think RLI was wrong in saying</p> <p>11 that we didn't respond within 10 days. I don't</p> <p>12 think it's reasonable for RLI to have expected us</p> <p>13 after doing a year of business and never asking a</p> <p>14 question, never caring to call, never caring to</p> <p>15 send a letter.</p> <p>16 Q Okay?</p> <p>17 A We get this many misses in this short a</p> <p>18 period of time. I think that's ridiculous. I</p> <p>19 think it's true that we didn't respond within the</p> <p>20 10 days of the escalated emails but I don't think</p> <p>21 it's reasonable to expect that we would respond</p> <p>22 the way that RLI expected.</p>	<p>356</p> <p>1 ridiculous.</p> <p>2 Q Mr. Donovan, just answer my question.</p> <p>3 A I did.</p> <p>4 Q Is it your testimony that RLI -- I</p> <p>5 mean, did RLI communicate to Nexus regarding the</p> <p>6 bond program and breaches throughout 2017?</p> <p>7 MR. SHOREMAN: Objection. His</p> <p>8 testimony is what he just testified to.</p> <p>9 A Not at all in the same manner that they</p> <p>10 communicated within the 10-day window that you've</p> <p>11 described in March, Ms. Katsantonis, no.</p> <p>12 Q I'm asking you did they?</p> <p>13 A It was completely inconsistent.</p> <p>14 Q Did RLI ask you questions about the</p> <p>15 status of various bonds and payments in 2016?</p> <p>16 A Sure. But they never requested</p> <p>17 \$10 million. Never tried to demand until -- they</p> <p>18 asked for 1.25 million and a continuation of the</p> <p>19 program or that we find another surety partner.</p> <p>20 Q Okay. So you think that was a</p> <p>21 reasonable request?</p> <p>22 A We found another surety -- whether it's</p>

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<p>1 reasonable or not I complied with it. I found</p> <p>2 another surety partner.</p> <p>3 Q Did you think that was --</p> <p>4 A And specifically --</p> <p>5 Q Mr. Donovan-</p> <p>6 A -- I was told by RLI that if I found</p> <p>7 another surety partner I wouldn't have to pay the</p> <p>8 \$1.2 million.</p> <p>9 Q We'll get to that in a moment.</p> <p>10 A So I found another surety partner.</p> <p>11 Whether it's reasonable or not that's what RLI</p> <p>12 requested and that's what I did.</p> <p>13 Q So is it your testimony that the</p> <p>14 request for collateral in the amount of a million</p> <p>15 250 was an agreement between you and RLI?</p> <p>16 A No. And you know it wasn't an</p> <p>17 agreement, Ms. Katsantonis. It's not even</p> <p>18 intellectually honest. You know that I'd never</p> <p>19 agree to that. You know that I chose to replace</p> <p>20 the surety. And it's questions like that, quite</p> <p>21 frankly, in this deposition, Ms. Katsantonis, that</p> <p>22 make me think you're trying to confuse the record.</p>	<p>1 originally, 250,000 modified by email. Read it,</p> <p>2 it's there.</p> <p>3 Q Okay. So that email in which</p> <p>4 Mr. Sandoz sent you an email for 250,000</p> <p>5 collateral that is your contention that that is</p> <p>6 the agreement between RLI and Nexus for</p> <p>7 collateral; is that correct?</p> <p>8 A That's correct. I believe that under</p> <p>9 the general indemnity agreement when there is a</p> <p>10 final claim on a bond, that we have to pay it.</p> <p>11 Q Okay. And on what date did you make a</p> <p>12 payment of any of that collateral pursuant to the</p> <p>13 agreement between RLI and Nexus?</p> <p>14 A So I've answered this question in my</p> <p>15 personal deposition. We're going to go back to</p> <p>16 this? I mean. I can refer you to that answer.</p> <p>17 Q Do you have a date?</p> <p>18 A I told you that I believe that we made</p> <p>19 a \$50,000 payment. We discussed extensively the</p> <p>20 fact that I can't point to it in the records. We</p> <p>21 know that there were apportioned commissions that</p> <p>22 were supposed to be received by Mr. LiMandri that</p>
<p>1 It's not what I said and with all due respect it's</p> <p>2 not appropriate.</p> <p>3 Q I'm trying to understand your</p> <p>4 testimony, Mr. Donovan.</p> <p>5 MR. SHOREMAN: No, you're not. You're</p> <p>6 asking him is it your testimony.</p> <p>7 A You're trying to misrepresent my</p> <p>8 testimony and I'm offended by it.</p> <p>9 MR. SHOREMAN: Me too.</p> <p>10 Q Okay.</p> <p>11 A And it's not funny, by the way.</p> <p>12 Q Well, I need to understand what you</p> <p>13 think the agreement was.</p> <p>14 A Well, I need to understand why you</p> <p>15 think that's funny. It's not funny.</p> <p>16 Q What do you believe is the agreement on</p> <p>17 collateral?</p> <p>18 A What do I believe is the agreement on</p> <p>19 collateral?</p> <p>20 Q Between RLI and Nexus, what was the</p> <p>21 agreement?</p> <p>22 A \$250,000 to -- read it. 500,000</p>	<p>1 Mr. Sandoz apportioned to the collateral. We have</p> <p>2 asked RLI to tell us how much money that is, RLI</p> <p>3 has refused to tell us, so I don't know.</p> <p>4 Q Under Mr. Sandoz's agreement you were</p> <p>5 to provide a \$50,000 payment on June 15th and</p> <p>6 July 15th, right?</p> <p>7 A And the email agreement? I believe</p> <p>8 that's correct; I'm not sure.</p> <p>9 Q Right. And so do you have any evidence</p> <p>10 or documents to support the fact that you made any</p> <p>11 of those \$50,000 payments?</p> <p>12 A I don't.</p> <p>13 Q Okay. And getting back to the</p> <p>14 contention with regard to the 2016 communications</p> <p>15 between RLI and Nexus --</p> <p>16 A Well, and --</p> <p>17 Q -- isn't it true --</p> <p>18 A I think it's important to note that you</p> <p>19 asked me about the communications with RLI. And</p> <p>20 the communications with RLI between March 3rd and</p> <p>21 March 13th are very different than any</p> <p>22 communication -- I mean, you're suggesting why</p>

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<p>361</p> <p>1 didn't -- where was the \$50,000 check pursuant to</p> <p>2 Mr. Sandoz's email.</p> <p>3 What I'm suggesting is that RLI's</p> <p>4 communication with Nexus was completely</p> <p>5 inconsistent prior to its stopping doing business</p> <p>6 with Nexus and after. And after being the</p> <p>7 March 3rd, March 6th, March 13th responses.</p> <p>8 Q Okay. So let me ask you, prior to the</p> <p>9 March 3rd letter, okay, wasn't RLI sending</p> <p>10 communications to Nexus asking for things like</p> <p>11 copies of appeals, copies of checks, copies of</p> <p>12 documents evidencing satisfaction of bond breach?</p> <p>13 A That would be the normal course of</p> <p>14 business and we were providing those things.</p> <p>15 Q So is the answer yes?</p> <p>16 A Yes. And we were providing those</p> <p>17 things, right.</p> <p>18 Q And didn't Mr. Sandoz come visit your</p> <p>19 offices twice in 2016 to understand better the</p> <p>20 process and procedures?</p> <p>21 A He did, and he was very, you know,</p> <p>22 wonderful to work with?</p>	<p>363</p> <p>1 A Sure. But part of that is part of our</p> <p>2 problem, right? Because you get those, right? So</p> <p>3 if like an invoice is canceled, your client gets</p> <p>4 it. So your client demanding it from us is silly</p> <p>5 because we need to get it from your client.</p> <p>6 Q And wasn't RLI constantly -- or</p> <p>7 consistently asking for paperwork on appeals and</p> <p>8 the list of bonds that had been appealed?</p> <p>9 A And I think we were consistently</p> <p>10 providing that information.</p> <p>11 Q So the answer's yes, correct?</p> <p>12 A Correct.</p> <p>13 Q All right. And this is all in 2016</p> <p>14 prior to the March 2017 letter, correct?</p> <p>15 A Right.</p> <p>16 Q Okay. And so in your amended</p> <p>17 counterclaim, and you can look at it if you'd</p> <p>18 like, paragraph 76, when you state, "from</p> <p>19 January 1st, 2016, to December 22nd, 2016, RLI did</p> <p>20 not ask for any communication or update on the</p> <p>21 status of the immigration bond."</p> <p>22 That's not true, correct?</p>
<p>362</p> <p>1 Q And didn't he ask for a packet of</p> <p>2 documents summarizing the program and the notices</p> <p>3 in 2016?</p> <p>4 A He may have.</p> <p>5 Q Okay. And wasn't RLI constantly</p> <p>6 requesting phone calls and communications</p> <p>7 regarding the bond breaches?</p> <p>8 A Constantly?</p> <p>9 Q Uh-huh.</p> <p>10 A I think our breach team was</p> <p>11 communicating with the RLI team. I think that</p> <p>12 there were consistent communications. I think</p> <p>13 there were consistent communications back and</p> <p>14 forth based on the records that I've reviewed.</p> <p>15 Q Right. And Nexus -- and RLI was asking</p> <p>16 about if a claim's rescinded, show us the</p> <p>17 documents to support that, correct?</p> <p>18 A If a claim is rescinded?</p> <p>19 Q Yeah.</p> <p>20 A What do you mean?</p> <p>21 Q If an invoice has been paid or if an</p> <p>22 invoice has been canceled they were --</p>	<p>364</p> <p>1 A Can I see that?</p> <p>2 Q Sure. I have it here somewhere.</p> <p>3 That's not it. It has a little sticker on it.</p> <p>4 A If I -- it's interesting, Vivian, if I</p> <p>5 draft a document, I can specifically remember.</p> <p>6 But if it's drafted by people and I read it I</p> <p>7 don't remember it --</p> <p>8 Q I'm the same way.</p> <p>9 A -- unless I see it in front of me. You</p> <p>10 know what I mean?</p> <p>11 Q Yep.</p> <p>12 A But if I wrote it, I can point letter,</p> <p>13 line, page number, you know.</p> <p>14 Q I know exactly.</p> <p>15 A I kind of figured you would.</p> <p>16 Q Oh, here we go.</p> <p>17 A Thank you.</p> <p>18 Q Sure.</p> <p>19 A What paragraph did you say?</p> <p>20 Q 76.</p> <p>21 Okay. Did you review that paragraph?</p> <p>22 A I have, yes.</p>

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<p>365</p> <p>1 Q So that's an inaccurate statement, 2 correct?</p> <p>3 A No, I don't think it's inaccurate.</p> <p>4 Q Okay. Why is that an accurate 5 statement?</p> <p>6 A Because right in the context of the 7 communications in March, what my understanding of 8 this is to say is that RLI, because we had 9 communications -- we had normal communications 10 before claims personnel -- the communication from 11 Mr. Sussman obviously is elevated communication 12 from RLI of a very direct and concerned nature.</p> <p>13 So I think that when -- when this is 14 drafted -- forgive me, I didn't draft it -- but 15 when I read it, I think that's -- that was 16 certainly what I understood.</p> <p>17 As I read it now, that's what I'm 18 thinking. Which is it's an inconsistency in 19 communication. It isn't to say that we didn't 20 have communications about normal day-to-day stuff. 21 It is to say that the types of questions and 22 concerns that were raised in the March 3rd, March</p>	<p>367</p> <p>1 sorry.</p> <p>2 Q We talked about this in your last 3 deposition, I just want to confirm.</p> <p>4 In October of 2016, certainly by early 5 November of 2016, RLI had advised you that it will 6 no longer be issuing bonds for -- at the request 7 of Nexus for immigrants, correct?</p> <p>8 A No. They communicated to us that we 9 could elect to pay a certain amount of money as 10 collateral to continue the program or we could 11 find another surety.</p> <p>12 Q Prior to that, though. Even then I 13 know -- but they told you at all times, starting 14 at least in the beginning of November, if not 15 sooner, that RLI was not planning to continue to 16 write immigration bonds at the request of Nexus?</p> <p>17 MR. SHOREMAN: Objection. Objection. 18 Who's "they"?</p> <p>19 Q RLI advised you prior -- at the latest, 20 in early November, 2016, that RLI would not be 21 issuing further bonds at the request of Nexus in 22 the coming year, in 2017?</p>
<p>366</p> <p>1 6th, March 13th communications were new except for 2 the references herein about Mr. Sandoz sending an 3 email on December 22nd. I think that's what it 4 does.</p> <p>5 Q And Mr. Sussman did have communications 6 in 2016 with Nexus, as we saw, for example, on his 7 correspondences back and forth with Juliana?</p> <p>8 A Oh, sure. Yeah, I think, again, it's 9 relative to the type of communication. And to the 10 extent that that's not artfully communicated in 11 that paragraph, that's unfortunate. But it is 12 related to the type of communication.</p> <p>13 Q Okay. And you may recall this from 14 your deposition last week as well. Isn't it true 15 that RLI advised you back in October, but 16 certainly by November, of 2016, that it would no 17 longer be issuing bonds in 2017?</p> <p>18 A While you were asking your question, I 19 thought I heard a child's voice over in the 20 corner, I don't know what that was, but it really 21 freaked me out, and I did not hear the rest of 22 your question. So can you please repeat it; I'm</p>	<p>368</p> <p>1 A Well, the only problem with that is 2 that they expressly said that they would continue 3 to write bonds for an indeterminate period of time 4 or we could pay the \$1.2 million in collateral. 5 And I believe that one of your witnesses testified 6 to that as well, specifically.</p> <p>7 Q Okay. Let me just ask my question 8 again, just answer.</p> <p>9 Is it your testimony that RLI did 10 not -- I mean, I just want to be clear.</p> <p>11 A No, sure, please.</p> <p>12 Q Didn't RLI advise you in early 13 November 2016, that RLI was going to stop issuing 14 immigration bonds at the request of Nexus in 2017?</p> <p>15 A My understanding was that we had an 16 either/or provision. We could pay \$1.25 million 17 in collateral or we could find an alternative 18 surety for future posting.</p> <p>19 We elected to find an alternate surety 20 for future posting. We did that. And we stopped 21 writing with RLI by February 27th, 2017, as 22 directed, either pay the 1.25 million or find</p>

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<p>369</p> <p>1 another surety. We found another surety and three</p> <p>2 days later I get this letter from Ira.</p> <p>3 And I think that's bad faith.</p> <p>4 THE WITNESS: Hey, can I get some more</p> <p>5 coffee? Is that at all possible? I just don't</p> <p>6 want to disconnect.</p> <p>7 MR. SHOREMAN: Is there a question</p> <p>8 pending?</p> <p>9 MS. KATSANTONIS: No.</p> <p>10 MR. SHOREMAN: I just want to consult</p> <p>11 with my client.</p> <p>12 MS. KATSANTONIS: All right. Let's go</p> <p>13 off the record.</p> <p>14 THE VIDEOGRAPHER: We are going off the</p> <p>15 record at 20:01.</p> <p>16 (Recess taken.)</p> <p>17 THE VIDEOGRAPHER: We are back on the</p> <p>18 record at 20:14.</p> <p>19 BY MS. KATSANTONIS:</p> <p>20 Q Okay. Before we took a break I was</p> <p>21 asking you whether or not RLI communicated to you</p> <p>22 in early November its intention to stop issuing</p>	<p>371</p> <p>1 A I mean, nothing in the agreement</p> <p>2 compelled them to continue posting bonds. I think</p> <p>3 the fact that they continued posting bonds was a</p> <p>4 sign that the program was working.</p> <p>5 Q And that right of RLI's was not</p> <p>6 contingent upon you finding someone else to write</p> <p>7 bonds, correct?</p> <p>8 A Sure. I mean, yeah, they could have</p> <p>9 stopped writing at any point in time.</p> <p>10 Q Right.</p> <p>11 A The fact that they didn't shows that</p> <p>12 they appreciated the program until they didn't.</p> <p>13 Q Right. But they could stop writing</p> <p>14 regardless of whether or not you provided</p> <p>15 additional collateral?</p> <p>16 A Sure. And so the fact that they</p> <p>17 didn't, I think is a –</p> <p>18 Q Let's mark this.</p> <p>19 A Mark it?</p> <p>20 MR. SHOREMAN: Thank you.</p> <p>21 (Donovan Exhibit 21 marked for</p> <p>22 identification and attached to the transcript.)</p>
<p>370</p> <p>1 immigration bonds in the upcoming 2017 year?</p> <p>2 A And my understanding of that is they</p> <p>3 communicated an either/or provision; that we could</p> <p>4 either find a new surety as of February 27, 2017,</p> <p>5 or we could post \$1.25 million in collateral with</p> <p>6 them. That was my understanding. And we chose to</p> <p>7 find a new surety partner.</p> <p>8 Q But didn't they tell you at all times</p> <p>9 that they were going to stop issuing immigration</p> <p>10 bonds in 2017, whether it be in January or</p> <p>11 February?</p> <p>12 A My understanding was that we could --</p> <p>13 if we had posted the collateral, we could have</p> <p>14 posted for an indeterminate amount of time. I'm</p> <p>15 not being clear. I mean, that was my</p> <p>16 understanding.</p> <p>17 Q Okay. So --</p> <p>18 A So based on that understanding, also</p> <p>19 understand, Ms. Katsantonis, that they could have</p> <p>20 canceled -- they could have stopped posting bonds</p> <p>21 at any time.</p> <p>22 Q Right.</p>	<p>372</p> <p>1 Q So this is an email dated November 8th,</p> <p>2 on the bottom, Mr. Sandoz to you. And he was</p> <p>3 requesting a conference call, and he said, "It's</p> <p>4 related to transitioning the program to a new</p> <p>5 surety and any progress made in that regard and</p> <p>6 thoughts we have as the program winds down."</p> <p>7 Do you see that?</p> <p>8 A I do.</p> <p>9 Q Okay. So do you recall in early</p> <p>10 November RLI had advised that it was planning on</p> <p>11 not issuing further immigration bonds in 2017?</p> <p>12 A So, yes. I mean, that was part of our</p> <p>13 conversation as to whether or not we continued</p> <p>14 with RLI either posting collateral or if we moved</p> <p>15 to a new surety.</p> <p>16 But I do remember this communication,</p> <p>17 and I think I was clear with Mr. Sandoz that, you</p> <p>18 know, we would prefer to find a new surety than</p> <p>19 post \$1.25 million.</p> <p>20 Q Okay. And looking at paragraph 86 of</p> <p>21 your amended complaint.</p> <p>22 A Uh-huh. I'm glad I got a copy of that.</p>

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<p>1 Q It states, "Without warning or 2 explanation, RLI declared on February 28th, 2017, 3 that it would no longer issue immigration bonds." 4 That's not an accurate statement, 5 correct? 6 A Yeah, I think that -- hold on a second. 7 I think that could have been more artfully 8 written. I think that it is -- while certainly 9 RLI's decision, you know, was February 27th, that 10 I think was the last day. But, you know, I think 11 that, obviously, there is communication between me 12 and RLI, meaning Dave Sandoz, about finding a new 13 surety. So we did, obviously. And the record is 14 clear that those communications occurred. 15 Q Right. And in fact, back in at least 16 December of 2016, RLI was advising you of its plan 17 to cease writing bonds by February of 2017, right? 18 A Absent the payment of collateral per 19 their request, yes. 20 Q Well, either way. They were telling 21 you about the February 2017. 22 A Certainly we were having conversations</p>	<p>373 1 so I don't know what the balance is. 2 Q Why would Mr. LiMandri post Nexus' 3 collateral? 4 A Well, it was your client's idea, and we 5 reviewed the email in my deposition, you may 6 remember, your client's idea was to take -- to use 7 those commissions, as it were, that were owed to 8 Mr. LiMandri for collateral, I think, because they 9 were owed to Mr. LiMandri at the end of the year. 10 Mr. Sandoz had indicated that they would -- that 11 RLI would be refunding all of the collateral at 12 the end of year. 13 So I think -- I don't know. You'd have 14 to ask Mr. Sandoz. I understand he's scheduled 15 for deposition this week. 16 Q Well, I'm just trying to ask you. Did 17 you have any -- right, it's not a payment that 18 Nexus provided, right? Any -- 19 A What do you mean? 20 Q -- collateral based on this commission 21 to Mr. LiMandri -- 22 A No. I'm not suggesting -- I'm not</p>
<p>374 1 about it, absolutely. 2 Q Okay. 3 MR. SHOREMAN: I'll note for the record 4 that the amended counterclaim, Exhibit 21, does 5 not appear to be verified and was prepared by 6 counsel. 7 MS. KATSANTONIS: Well, I believe, 8 Mr. -- we won't argue the point here, during the 9 deposition. 10 MR. SHOREMAN: Okay. 11 THE WITNESS: She reserves the right to 12 argue all the time. 13 Q With regard to collateral, do you have 14 any evidence that Nexus at any time prior to 15 March 13th, 2017, sent a collateral payment to 16 RLI? 17 A Yes, of sorts. I have a communication 18 from Mr. Sandoz saying that certain commissions 19 related to the immigration bond program that were 20 due to Mr. LiMandri were being credited to the 21 collateral account. I do not know how much that 22 was, and RLI has never responded with a balance,</p>	<p>375 1 suggesting that RLI should have made that offer. 2 I'm saying RLI did. I have representations of the 3 offer in writing, but no idea of how much it is. 4 You asked me if I had any evidence. 5 And I said, "Yes," and I referenced that email. 6 I'm not suggesting that it was proper. I'm 7 just -- or right or the best idea -- I'm just 8 suggesting that it was an email, I have it, and 9 you've seen it. 10 Q I understand. What I'm asking you is 11 that any commissions that you think should be 12 credited that were due to Mr. LiMandri's -- 13 A Are absolutely not due to me. 14 Q -- are not payments that Nexus made, 15 correct? 16 A We should never receive commissions, so 17 I agree. But my understanding was that based on 18 what RLI had represented, that those monies were 19 going to be placed in that collateral account and 20 then, I presumed, paid to Marco LiMandri as the 21 contract that your client had with him would have 22 provided for.</p>

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<p>377</p> <p>1 Q You don't have any writing of</p> <p>2 Mr. LiMandri agreeing to post any collateral on</p> <p>3 behalf of Nexus, right?</p> <p>4 A No. But I do have your -- your client</p> <p>5 saying this is what we're going to do, and that's</p> <p>6 in an email and you've seen it. Your client has</p> <p>7 refused to tell us what that email means --</p> <p>8 Q Mr. Donovan --</p> <p>9 A -- and how much money was apportioned</p> <p>10 to collateral.</p> <p>11 Q -- I'm just trying to understand that</p> <p>12 you're talking about portion of the collateral</p> <p>13 coming from Mr. LiMandri who has no contractual</p> <p>14 basis with you to pay collateral to RLI on Nexus'</p> <p>15 behalf, right?</p> <p>16 A I'm talking --</p> <p>17 MR. SHOREMAN: Objection. This was</p> <p>18 asked and answered. Secondly, he testified it was</p> <p>19 your client's idea.</p> <p>20 MS. KATSANTONIS: Doesn't matter.</p> <p>21 A But it was your client's idea. And</p> <p>22 the --</p>	<p>379</p> <p>1 understand it.</p> <p>2 Q Okay. And you have no evidence that</p> <p>3 Nexus, at any time before March 13th, 2017, sent a</p> <p>4 collateral payment to RLI?</p> <p>5 A I do not have the documentation of a</p> <p>6 check tendered to RLI, no.</p> <p>7 Q Right. You don't have check, wire, or</p> <p>8 any documentation to show that Nexus has sent a</p> <p>9 collateral payment to RLI?</p> <p>10 A That's correct. I do not have that</p> <p>11 detail.</p> <p>12 Q Okay. Isn't it true that --</p> <p>13 A Yeah, you've already covered it.</p> <p>14 Moving on. Don't ask that. You'll be thinking</p> <p>15 tonight, you'll be like, "Man, I wish I would have</p> <p>16 asked that. That was the one place we didn't go</p> <p>17 where we should have."</p> <p>18 And Chris will be like, "I told you</p> <p>19 that."</p> <p>20 Your sugar cookies are really good. I</p> <p>21 mean, they're okay, compared to the chocolate chip</p> <p>22 cookies.</p>
<p>378</p> <p>1 Q That's not my question. My question is</p> <p>2 just do you have any agreement in writing by</p> <p>3 Mr. LiMandri to post collateral on behalf of</p> <p>4 Nexus?</p> <p>5 A No, of course not.</p> <p>6 Q Okay.</p> <p>7 A It's not my collateral -- it's not my</p> <p>8 commission. It's not my money.</p> <p>9 Q Exactly.</p> <p>10 A It is your client who suggested that it</p> <p>11 was being posted for collateral purposes.</p> <p>12 Q All right. So --</p> <p>13 A Your client is the one that said that</p> <p>14 that money was being posted, not me. I didn't ask</p> <p>15 for it, your client offered it.</p> <p>16 Q All right. And do you have any --</p> <p>17 A You sent me the email.</p> <p>18 Q -- writing in which Mr. LiMandri</p> <p>19 accepted the term to provide collateral through</p> <p>20 his commissions on behalf of Nexus?</p> <p>21 A No. I believe Mr. LiMandri took some</p> <p>22 issue with you not paying his commissions, as I</p>	<p>380</p> <p>1 Q Can you identify any instance in which</p> <p>2 Nexus offered to provide collateral to RLI?</p> <p>3 A Yes. I mean, we signed the collateral</p> <p>4 agreement. That was an offer to provide</p> <p>5 collateral. We had negotiations with Mr. Sandoz</p> <p>6 about collateral and conversations about</p> <p>7 collateral. So, yes.</p> <p>8 Do I have record of any of that</p> <p>9 collateral changing hands? In other words, do I</p> <p>10 have a canceled check or something like that?</p> <p>11 That answer remains no.</p> <p>12 Q Okay. And are there any other</p> <p>13 instances than the ones you just mentioned in</p> <p>14 which Nexus has offered to provide collateral to</p> <p>15 RLI?</p> <p>16 A Can you repeat the question?</p> <p>17 Q Other than --</p> <p>18 A I want to make sure I heard it.</p> <p>19 Q -- the instances you just mentioned,</p> <p>20 which was the collateral agreement, the</p> <p>21 discussions with Mr. Sandoz, are there any other</p> <p>22 instances in which Nexus offered to provide</p>

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<p>1 collateral to RLI?</p> <p>2 <b>A Other than the communications about</b></p> <p>3 <b>collateral to Mr. Sandoz and then the agreements,</b></p> <p>4 <b>no.</b></p> <p>5 Q Okay.</p> <p>6 <b>A Not that I'm aware of.</b></p> <p>7 Q What collateral has Nexus provided to</p> <p>8 other sureties?</p> <p>9 <b>A Nexus has provided deeds of trust to</b></p> <p>10 <b>other sureties; Nexus has provided cash collateral</b></p> <p>11 <b>to other sureties; Nexus has provided cash</b></p> <p>12 <b>collateral to AIA pursuant to an escrow agreement</b></p> <p>13 <b>that we have with that surety; and we've provided</b></p> <p>14 <b>collateral to FCS.</b></p> <p>15 Q Okay. The deeds of trust, you said,</p> <p>16 was to Statewide, right?</p> <p>17 <b>A That is correct.</b></p> <p>18 Q Any other bonding company that you</p> <p>19 provided deed of trust to?</p> <p>20 <b>A Action Bail Bonds.</b></p> <p>21 Q And what is that a deed of trust to?</p> <p>22 <b>A You know what? I apologize. We don't</b></p>	<p>1 <b>A It's a rolling account that we</b></p> <p>2 <b>replenish from time to time, yeah.</b></p> <p>3 <b>Ms. Katsantonis, do you mind if I phone</b></p> <p>4 <b>a friend on the AIA total escrow balance so I can</b></p> <p>5 <b>get that for you real quick?</b></p> <p>6 Q Why don't we do it off the record.</p> <p>7 <b>A Yeah, I can do that.</b></p> <p>8 Q Do you want to do that now?</p> <p>9 <b>A No, I can wait until we finish. Let's</b></p> <p>10 <b>just get through it, you know.</b></p> <p>11 Q Yeah. So you testified earlier, and I</p> <p>12 want to know what facts and circumstances Nexus</p> <p>13 asserts supports its contention that RLI acted in</p> <p>14 bad faith or failed to act in good faith?</p> <p>15 <b>A We've covered this at some length. But</b></p> <p>16 <b>I will restate several instances where I think</b></p> <p>17 <b>that's true.</b></p> <p>18 Q Okay.</p> <p>19 <b>A RLI has not permitted us to dispute</b></p> <p>20 <b>invoices either pre- -- sorry breaches -- either</b></p> <p>21 <b>pre-invoice or post that has cost Nexus real</b></p> <p>22 <b>money. Nexus default rates with RLI are higher.</b></p>
<p>1 <b>have any collateral with Action. We had -- our --</b></p> <p>2 <b>Action was the first company that we used, and</b></p> <p>3 <b>there were a couple of bonds that were posted</b></p> <p>4 <b>there, but all of those bonds have been canceled</b></p> <p>5 <b>so there's no current liability; I apologize.</b></p> <p>6 Q How much cash collateral have you</p> <p>7 posted with FCS?</p> <p>8 <b>A I believe it's 650,000, but, Vivian,</b></p> <p>9 <b>I'll get you the exact number before I leave</b></p> <p>10 <b>today.</b></p> <p>11 Q Okay. I've seen checks that total 625,</p> <p>12 so maybe that's...</p> <p>13 <b>A You know what? I think that's exactly</b></p> <p>14 <b>right. But I'm going to confirm it just in case.</b></p> <p>15 Q Okay. And what about to AIA?</p> <p>16 <b>A I'm going to have to confirm that. I</b></p> <p>17 <b>know, I believe it's 213,000 in that account, but</b></p> <p>18 <b>that -- that agreement allows for them to pay out</b></p> <p>19 <b>of that account. So I have to look at the record</b></p> <p>20 <b>to get you the total, but I will do that, okay.</b></p> <p>21 Q Is that a rolling account that you have</p> <p>22 to replenish?</p>	<p>1 Part of the issue with that is RLI's unwillingness</p> <p>2 to sign a confidentiality agreement that required</p> <p>3 notification of our clients of the pending action</p> <p>4 in the Western District of Virginia related to the</p> <p>5 injunction order. I believe that our noticing</p> <p>6 clients of that has created some elevated breach</p> <p>7 activity. And also having to communicate with RLI</p> <p>8 clients about the full production of the Capsule</p> <p>9 data. Again, now we can communicate and we have</p> <p>10 sent a copy of the court's protective order to our</p> <p>11 clients. But initially we didn't have a</p> <p>12 confidentiality agreement because RLI wouldn't</p> <p>13 agree. So, you know, our initial disclosure to</p> <p>14 some RLI and Libre participants was that we are</p> <p>15 potentially going to have to disclose your</p> <p>16 information. Thank goodness the court provided a</p> <p>17 protective order.</p> <p>18 Had RLI agreed to the confidentiality</p> <p>19 provisions early on, there would have been no need</p> <p>20 to go to the court to get an injunction that you</p> <p>21 literally -- we literally got a more -- a stronger</p> <p>22 protective order than we had asked you to sign in</p>

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<p>1 the confidentiality agreement.</p> <p>2 So, again, I think good faith would</p> <p>3 have been signing the confidentiality agreement</p> <p>4 and allowing us to provide access to books and</p> <p>5 records without threatening the lives of our</p> <p>6 program participants.</p> <p>7 Q With regard to the --</p> <p>8 A And there's more. Do you want me to --</p> <p>9 Q Sure. Give me every basis you're</p> <p>10 contending.</p> <p>11 MR. WILLIAMS: Well, I don't want you</p> <p>12 think I'm try to -- do you want to go off so I can</p> <p>13 ask you is there a specific area that you wanted</p> <p>14 him to cover?</p> <p>15 MS. KATSANTONIS: I want him to cover</p> <p>16 each and every instance which he's asserting that</p> <p>17 we -- that RLI acted in bad faith.</p> <p>18 MR. WILLIAMS: Well, rewriting the</p> <p>19 contract to cover all bonds, the value of all</p> <p>20 bonds when that's not what the contract says.</p> <p>21 THE WITNESS: I'm going to --</p> <p>22 MS. KATSANTONIS: I'm not going to ask</p>	<p>1 "Hey, we want \$10 million."</p> <p>2 It's absolutely bad faith.</p> <p>3 Q Okay. Did you -- anything else that</p> <p>4 you can think of right now?</p> <p>5 A As I said, I'll countenance all of my</p> <p>6 different, you know, portions of my testimony</p> <p>7 around bad faith, and I think that they've been</p> <p>8 thoroughly articulated at different points in time</p> <p>9 between this deposition and my last one.</p> <p>10 Q Okay.</p> <p>11 A But I'm more than happy to take up the</p> <p>12 next hour if you'd like. I think that's all the</p> <p>13 time we have.</p> <p>14 Q Well, let me ask you this: With regard</p> <p>15 to the collateral demands, the 1.25 or the</p> <p>16 10 million, did Nexus -- Nexus did not pay any of</p> <p>17 those collateral demands, right?</p> <p>18 A No. We exercised the option that RLI</p> <p>19 gave us, the either/or, which is to find a new</p> <p>20 surety so that we wouldn't have to pay the</p> <p>21 collateral demand.</p> <p>22 Q Didn't Nexus start writing bonds with a</p>
<p>1 you to testify, Mr. Williams. I want Mr. Donovan</p> <p>2 to give us his understanding.</p> <p>3 MR. WILLIAMS: That's what I was trying</p> <p>4 to --</p> <p>5 A What I'd like to do is I'd like to</p> <p>6 point out that I've answered this question several</p> <p>7 times, both in this deposition and my last one,</p> <p>8 and I'm going to countenance my answer as a</p> <p>9 collective and ask that you look at all of those</p> <p>10 responses, because there are so many elements of</p> <p>11 bad faith that I've mentioned so many at different</p> <p>12 times.</p> <p>13 What I will say, also, is the demand</p> <p>14 for \$1.25 million in collateral, which was</p> <p>15 seemingly based on nothing, and then that demand</p> <p>16 of either pay \$1.25 million in collateral or find</p> <p>17 a different surety to move forward. So we did</p> <p>18 that, we found a different surety to move forward,</p> <p>19 and then on March 3rd we began to get letters from</p> <p>20 Ira Sussman, March 3rd, March 6th, literally the</p> <p>21 day after, Friday to Monday. Then March 13th you</p> <p>22 go from "Hey, we're a little bit concerned" to</p>	<p>1 new surety months before that December 2016 email?</p> <p>2 A Evergreen? I don't believe that's the</p> <p>3 truth -- I don't believe that's the case. Nexus</p> <p>4 may have had a relationship with another surety</p> <p>5 FCS.</p> <p>6 Q Right?</p> <p>7 A But understand, Ms. Katsantonis, and</p> <p>8 this is where I have a real problem, like, we need</p> <p>9 to be very specific. This is a deposition. I</p> <p>10 need to be -- you know, we need to be clear what</p> <p>11 we're talking about. So can you repeat the</p> <p>12 question and let me --</p> <p>13 Q Weren't you already issuing and</p> <p>14 increasing the amount of bonds you were writing in</p> <p>15 June of 2016 with another surety?</p> <p>16 A We did have another surety, and we did</p> <p>17 write or post or secure bonds with two sureties</p> <p>18 for a certain period of time, yes.</p> <p>19 Q And you were --</p> <p>20 A But your question.</p> <p>21 Q -- increasing in the June --</p> <p>22 A Your question was did we -- did we in</p>

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<p>389</p> <p>1 fact engage the new surety early. Your line of</p> <p>2 deposition question before was about Evergreen.</p> <p>3 Q I --</p> <p>4 A So I want to make sure we're not --</p> <p>5 Q I appreciate your being precise.</p> <p>6 A I just don't want to be imprecise, yes,</p> <p>7 exactly.</p> <p>8 Q I totally understand what you're saying</p> <p>9 and I appreciate that.</p> <p>10 But I'm saying in June of 2016 through</p> <p>11 December of 2016, didn't Nexus increase the amount</p> <p>12 of bonds it was writing with FCS?</p> <p>13 A We did, have -- yes. I don't know if</p> <p>14 it would be -- when you say "Increase," do you</p> <p>15 mean that we did more with FCS than RLI?</p> <p>16 Q You were writing a -- well, you were</p> <p>17 writing a significant amount of bonds more with</p> <p>18 FCS than RLI, right?</p> <p>19 A Over the life cycle of the program,</p> <p>20 yes. There probably were time where we were</p> <p>21 writing more the RLI than FCS in that window.</p> <p>22 Q No. With FCS than RLI.</p>	<p>391</p> <p>1 actual loss of potential --</p> <p>2 Q Actual loss Nexus has stained.</p> <p>3 MR. WILLIAMS: Excluding attorneys'</p> <p>4 fees?</p> <p>5 Q -- as a result of RLI's alleged bad</p> <p>6 faith or not acting in good faith?</p> <p>7 A Got it. Thank you, Ms. Katsantonis,</p> <p>8 and just to be clear, what I heard you say before</p> <p>9 was the collateral demands. And I want to make</p> <p>10 sure --</p> <p>11 Q Well, I mean both.</p> <p>12 A I want to make sure. I want to be</p> <p>13 clear.</p> <p>14 So the -- RLI's unwillingness to</p> <p>15 provide a confidentiality agreement that protected</p> <p>16 the clients; RLI's demand for 1.25 million or to</p> <p>17 replace the surety, we replaced the surety as RLI</p> <p>18 requires, and then RLI demands \$10 million.</p> <p>19 You know, we have an elevated breach</p> <p>20 rate with RLI that has everything to do with the</p> <p>21 way that this relationship has existed. And, you</p> <p>22 know, our communications with clients related to</p>
<p>390</p> <p>1 A See how inartful I can be.</p> <p>2 Q And Nexus did not respond to the</p> <p>3 10 million collateral demand from RLI, right?</p> <p>4 A No. With all due respect, I thought it</p> <p>5 was a ridiculous demand. It was not based on</p> <p>6 reality.</p> <p>7 Q Right. And so what, if any, damages</p> <p>8 has Nexus sustained as a result of the collateral</p> <p>9 demand?</p> <p>10 A Well, as it relates to the bad faith in</p> <p>11 general, I think that it's important to understand</p> <p>12 that this starts with the demand for access to</p> <p>13 books and records and the unwillingness to sign a</p> <p>14 confidentiality agreement to protect these</p> <p>15 vulnerable people, which our company then spent a</p> <p>16 million dollars in legal fees to try to protect.</p> <p>17 So why don't you ask me the question</p> <p>18 again. I want to make sure I completely</p> <p>19 understand.</p> <p>20 Q I'm just trying to understand what</p> <p>21 financial loss --</p> <p>22 MR. WILLIAMS: Are you talking about</p>	<p>392</p> <p>1 disclosures have made it more difficult to manage</p> <p>2 this book. And it's unfortunate.</p> <p>3 And we -- when you look at the 2.3</p> <p>4 fault rate versus the 7 percent fault rate with</p> <p>5 RLI, we're talking about millions of dollars in</p> <p>6 potential damages. Not to mention the fact that</p> <p>7 you just put a document in front of me where Ira</p> <p>8 Sussman refused to allow us to contest and</p> <p>9 mitigate an invoice that clearly should have been</p> <p>10 \$3,400 and not \$10,000. Not to mention the fact</p> <p>11 that we have the bonds that we referenced on the</p> <p>12 Friday, which you show that was canceled, and you</p> <p>13 also billed us for, that we paid for, even though</p> <p>14 in your production discovery you said you received</p> <p>15 the cancellation for it.</p> <p>16 Q Can you tell me --</p> <p>17 A You can add all that up together. And</p> <p>18 in fact, maybe I can -- maybe I'll put together a</p> <p>19 damages sheet and send it to you so you'll have</p> <p>20 it.</p> <p>21 Q Sitting here today, you can't</p> <p>22 identity -- you can quantify the financial losses</p>

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<p>1 sustained by Nexus as a result of RLI's failure to</p> <p>2 act in good faith or acting in bad faith, correct?</p> <p>3 <b>A Oh, absolutely I can.</b></p> <p>4 Q What is it?</p> <p>5 <b>A I'll do one of two things. I can -- we</b></p> <p>6 <b>can finish this deposition and I'll get it to you</b></p> <p>7 <b>before I leave, or I can pause -- I'll take some</b></p> <p>8 <b>time right now to get it. Whichever you prefer.</b></p> <p>9 Q What are the elements of the costs that</p> <p>10 you were asserting Nexus has incurred?</p> <p>11 <b>A Okay. So I'm going to go to -- I'm</b></p> <p>12 <b>going to go to documents and review. I'm going to</b></p> <p>13 <b>need a few minutes to do that.</b></p> <p>14 <b>Do you want to do that or do you want</b></p> <p>15 <b>me to finish the deposition and let me get that to</b></p> <p>16 <b>you --</b></p> <p>17 Q What document would you review?</p> <p>18 <b>A I would review the fail rate. I would</b></p> <p>19 <b>want to look at the fail rate and what that -- if</b></p> <p>20 <b>the fail rate with RLI was consistent with our</b></p> <p>21 <b>average fail rate, what that would be. I want to</b></p> <p>22 <b>look at individual instances where we sought to do</b></p>	<p>1 you quantified --</p> <p>2 MR. SHOREMAN: Wait a second.</p> <p>3 Q -- the amount of damages Nexus has</p> <p>4 incurred?</p> <p>5 <b>A More than happy to do it right now</b></p> <p>6 <b>based on documents. Just give me a few minutes.</b></p> <p>7 Q Wait a minute. Mr. Donovan, have you</p> <p>8 done it before right now?</p> <p>9 <b>A There are plenty of instances of the</b></p> <p>10 <b>damages. I have to add them together. You're</b></p> <p>11 <b>asking me to do that. I'm happy to provide them</b></p> <p>12 <b>to you, okay?</b></p> <p>13 <b>I can do it now. We can take the time</b></p> <p>14 <b>and I can go do it now. I was nice and offered to</b></p> <p>15 <b>let you finish this deposition and then do it on</b></p> <p>16 <b>my own time, which I don't have to do that. I was</b></p> <p>17 <b>being nice --</b></p> <p>18 MR. HARRIS: Actually you do.</p> <p>19 <b>A -- because I'm trying to be respectful.</b></p> <p>20 MR. WILLIAMS: We'll amend the initial</p> <p>21 disclosures.</p> <p>22 MS. KATSANTONIS: I'm not asking you to</p>
<p>1 disputes.</p> <p>2 <b>So there's a lot of documentation that</b></p> <p>3 <b>I want to review. I'm more than happy to provide</b></p> <p>4 <b>you a damages sheet, and I can do it tonight, or I</b></p> <p>5 <b>can do it now. But I'm going to need some time to</b></p> <p>6 <b>go through my documents. That's what I'm saying.</b></p> <p>7 Q We only have less than an hour left.</p> <p>8 <b>A I'm trying to be respectful.</b></p> <p>9 Q I'm asking you right now whether you</p> <p>10 can quantify the damages incurred, any damages</p> <p>11 incurred by Nexus as a result of RLI's failure to</p> <p>12 act in good faith or bad faith?</p> <p>13 MR. WILLIAMS: He'll amend the initial</p> <p>14 disclosures. The initial disclosures --</p> <p>15 <b>A Well, no, I'll take the time to do it</b></p> <p>16 <b>now.</b></p> <p>17 Q I don't want you to take the time. I</p> <p>18 don't have time on my record.</p> <p>19 <b>A You've asked me three times, Ms.</b></p> <p>20 <b>Katsantonis. You asked me three times. Now, do</b></p> <p>21 <b>you want me to answer the question or not?</b></p> <p>22 Q I'm asking you right now do you -- have</p>	<p>1 amend anything. Today's the deposition.</p> <p>2 MR. HARRIS: A specific topic he was</p> <p>3 supposed to be prepared on the facts and</p> <p>4 circumstances surrounding the damages.</p> <p>5 MR. SHOREMAN: He's prepared. He can</p> <p>6 do this.</p> <p>7 THE WITNESS: Yeah, I will do it.</p> <p>8 MS. KATSANTONIS: I'm not --</p> <p>9 MR. HARRIS: It's deposition time --</p> <p>10 THE WITNESS: Because I'm not going to</p> <p>11 be accused of not being prepared. Absolutely.</p> <p>12 MR. KOWALCZUK: The court reporter</p> <p>13 cannot transcribe all of you talking at the same</p> <p>14 time.</p> <p>15 MR. SHOREMAN: Then let me talk. We</p> <p>16 did it -- just calculated --</p> <p>17 MS. KATSANTONIS: Mr. Shoreman, I'm not</p> <p>18 having this deposition as a exercise for</p> <p>19 Mr. Donovan to get --</p> <p>20 THE WITNESS: No, this is an exercise</p> <p>21 where Mr. Donovan answers your questions. And</p> <p>22 that's what I'm going to do.</p>

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<p>397</p> <p>1 MR. SHOREMAN: It's not a memory test.</p> <p>2 It's not a memory test. He has to refer to his</p> <p>3 documents.</p> <p>4 MS. KATSANTONIS: I asked him which</p> <p>5 categories of documents he's referring to.</p> <p>6 Q What are you referring to, Mr. Donovan?</p> <p>7 MR. SHOREMAN: He's referring to</p> <p>8 default records.</p> <p>9 MS. KATSANTONIS: Don't --</p> <p>10 Mr. Shoreman, please let him testify.</p> <p>11 <b>A I've already answered the question,</b></p> <p>12 <b>Ms. Katsantonis. I told you that I wanted to</b></p> <p>13 <b>review the default rates and understand the</b></p> <p>14 <b>difference. I told --</b></p> <p>15 Q Can you tell me what calculation you're</p> <p>16 doing?</p> <p>17 <b>A Ma'am, I'm not done. You're</b></p> <p>18 <b>interrupting me again. That's not nice.</b></p> <p>19 <b>I'm also going to go and look at the</b></p> <p>20 <b>data. You just put an email in front of me that</b></p> <p>21 <b>showed the \$6,600 that your client cost us by not</b></p> <p>22 <b>letting us dispute. I need to add those up. It's</b></p>	<p>399</p> <p>1 THE WITNESS: Please.</p> <p>2 MR. SHOREMAN: -- based on the</p> <p>3 documents he has in front of him.</p> <p>4 THE WITNESS: That's right.</p> <p>5 Q Based on -- one of the issues you</p> <p>6 stated was the -- a confidentiality agreement,</p> <p>7 correct?</p> <p>8 <b>A Yes, ma'am.</b></p> <p>9 Q Is there a confidentiality clause in</p> <p>10 the indemnity agreement between RLI and Nexus?</p> <p>11 <b>A I'd have to review it. I don't</b></p> <p>12 <b>remember every word of it.</b></p> <p>13 Q You know there's not one in the</p> <p>14 RLI/Nexus --</p> <p>15 MR. SHOREMAN: Objection.</p> <p>16 Q -- indemnity agreement right?</p> <p>17 MR. SHOREMAN: Objection.</p> <p>18 MR. WILLIAMS: Objection.</p> <p>19 MR. SHOREMAN: Objection. That's not a</p> <p>20 proper question.</p> <p>21 MS. KATSANTONIS: He's answering the</p> <p>22 question.</p>
<p>398</p> <p>1 <b>a simple mathematical thing. Let me add them up.</b></p> <p>2 <b>If you want the total now, give me a</b></p> <p>3 <b>few minutes, I'll add it up, I'll give it to you.</b></p> <p>4 <b>If you want the total after, then we'll finish the</b></p> <p>5 <b>deposition; I'll give it to you after.</b></p> <p>6 <b>This doesn't have to be -- this is not</b></p> <p>7 <b>going to be a "gotcha." If you want to put on the</b></p> <p>8 <b>record that I don't know, then I'm going to take</b></p> <p>9 <b>the moments necessary to get you the number.</b></p> <p>10 Q I think it's obvious that at this</p> <p>11 moment right now you don't know without taking the</p> <p>12 time to add it up.</p> <p>13 <b>A I would have to add it up.</b></p> <p>14 <b>Do you want me to add it up?</b></p> <p>15 MR. SHOREMAN: Objection.</p> <p>16 Q No, I want to finish -- I want to</p> <p>17 continue with my deposition. I don't have time</p> <p>18 left. So let me continue with my questions.</p> <p>19 One of the things I asked about --</p> <p>20 MR. SHOREMAN: I want the record to</p> <p>21 reflect that you denied him the opportunity to</p> <p>22 answer the question --</p>	<p>400</p> <p>1 MR. HARRIS: You've made your objection</p> <p>2 three times.</p> <p>3 MR. SHOREMAN: Right. But it wasn't a</p> <p>4 proper question and you continued.</p> <p>5 Q Go ahead.</p> <p>6 <b>A As it relates to protecting Nexus</b></p> <p>7 <b>Program participants, we felt it was important to</b></p> <p>8 <b>negotiate additional protections given the</b></p> <p>9 <b>extensive amount of information RLI was</b></p> <p>10 <b>requesting.</b></p> <p>11 Q Okay. And you -- so in the indemnity</p> <p>12 agreement between RLI and Nexus, there is no such</p> <p>13 confidentiality provision, right?</p> <p>14 <b>A Correct.</b></p> <p>15 Q And, in fact, you have negotiated other</p> <p>16 indemnity agreements and have added those kind of</p> <p>17 provisions in those indemnity agreements, correct?</p> <p>18 <b>A I learned from this relationship,</b></p> <p>19 <b>Ms. Katsantonis.</b></p> <p>20 Q All right. Can you just verify --</p> <p>21 let's mark this exhibit.</p> <p>22 (Donovan Exhibit 22 marked for</p>

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<p>401</p> <p>1 identification and attached to the transcript.)</p> <p>2 Q This is a Commercial and Immigration</p> <p>3 Surety Indemnity Agreement on behalf of</p> <p>4 Philadelphia Reinsurance Corporation and executed</p> <p>5 by Nexus Services, Inc., correct?</p> <p>6 A <b>That is correct.</b></p> <p>7 Q Okay. And to the best of your</p> <p>8 knowledge, is this an accurate copy of the</p> <p>9 indemnity agreement you executed with -- or on</p> <p>10 behalf of Philadelphia Reinsurance Corporation?</p> <p>11 A <b>To the best of my knowledge, it is.</b></p> <p>12 Q Okay. And with regard to -- with</p> <p>13 regard to the confidentiality agreement, you said</p> <p>14 that you had to make a disclosure to Libre</p> <p>15 participants?</p> <p>16 A <b>We did make a few disclosures to Libre</b></p> <p>17 <b>participants at different times during this case</b></p> <p>18 <b>with RLI.</b></p> <p>19 Q How did you make disclosures to Libre</p> <p>20 participants?</p> <p>21 A <b>We've called. We've sent messages.</b></p> <p>22 <b>Mostly called. We operate a call center so we'll</b></p>	<p>403</p> <p>1 A <b>Yes.</b></p> <p>2 Q Okay. And how many?</p> <p>3 A <b>Those people -- those people have</b></p> <p>4 <b>independent rights. As Judge Urbanski said, they</b></p> <p>5 <b>have a right to --</b></p> <p>6 Q I'm just asking you how many people did</p> <p>7 you advise that to?</p> <p>8 A <b>I don't know. But I'll get you the</b></p> <p>9 <b>total by the time I leave here today.</b></p> <p>10 Q Is it more than ten?</p> <p>11 A <b>I'm sure.</b></p> <p>12 Q And that was all verbal.</p> <p>13 A <b>Correct.</b></p> <p>14 Q And did --</p> <p>15 A <b>We have sent a copy of the court's</b></p> <p>16 <b>protective record to clients. So we have a</b></p> <p>17 <b>written document that's gone out, and I'll get a</b></p> <p>18 <b>copy of that to you as well.</b></p> <p>19 Q Okay. And did program participants in</p> <p>20 their contract, don't they agree that all the</p> <p>21 information provided can be shared with the</p> <p>22 surety?</p>
<p>402</p> <p>1 <b>call people and advise them.</b></p> <p>2 Q So any calls to Libre participants</p> <p>3 advising that you were disclosing Capsule</p> <p>4 documents would be reflected in the notes?</p> <p>5 A <b>Likely. The only instance where that</b></p> <p>6 <b>wouldn't be the case is if that was a call that</b></p> <p>7 <b>was being done by a special group of call center.</b></p> <p>8 <b>In other words, it isn't done by our Libre call</b></p> <p>9 <b>center. We would have brought in -- so, for</b></p> <p>10 <b>example, when we have a disclosure, we have to</b></p> <p>11 <b>reach a certain number of people. We'll bring in</b></p> <p>12 <b>team, we have an empower call center team that</b></p> <p>13 <b>will come in and make calls from time to time, and</b></p> <p>14 <b>those records may or may not be reflected in</b></p> <p>15 <b>Capsule.</b></p> <p>16 Q Did you make -- did you cause anyone</p> <p>17 specifically? Did Nexus -- do you have a record</p> <p>18 that you specifically advised a program</p> <p>19 participant that there was going to be a</p> <p>20 disclosure of Capsule documents?</p> <p>21 A <b>We made --</b></p> <p>22 Q To RLI?</p>	<p>404</p> <p>1 A <b>No. Not under RLI's -- RLI was under</b></p> <p>2 <b>the old contract, Ms. Katsantonis.</b></p> <p>3 Q Right. And didn't the old contract</p> <p>4 provide that the information provided could be</p> <p>5 provided to the surety?</p> <p>6 A <b>Well, I understand, based on my initial</b></p> <p>7 <b>deposition, that you misunderstand a portion of</b></p> <p>8 <b>the agreement to say that.</b></p> <p>9 <b>The new contract does say that certain</b></p> <p>10 <b>information will be shared with the surety. But</b></p> <p>11 <b>the only contract had a privacy provision that</b></p> <p>12 <b>said specifically that GPS tracking data and other</b></p> <p>13 <b>personal information wouldn't be.</b></p> <p>14 Q How many RLI bond -- program</p> <p>15 participants have executed the new contract?</p> <p>16 A <b>Roughly half. I will get you the total</b></p> <p>17 <b>tonight.</b></p> <p>18 Q Did Nexus sustain any financial damage</p> <p>19 as a result of RLI's demand for 10 million in</p> <p>20 collateral?</p> <p>21 MR. SHOREMAN: Wait. That was just</p> <p>22 asked and answered.</p>

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<p>405</p> <p>1 A Yeah. Well, I mean, we had —</p> <p>2 Q Specific to the collateral demand.</p> <p>3 A Right. Well, that collateral demand</p> <p>4 was part of the successive of series of</p> <p>5 communications that led us to try to negotiate the</p> <p>6 confidentiality agreement. There were significant</p> <p>7 amounts of money spent trying to compel RLI to</p> <p>8 just agree not to put these people at risk, right?</p> <p>9 Q So you're talking about attorneys'</p> <p>10 fees.</p> <p>11 A I'm talking about attorneys' fees. I'm</p> <p>12 also talking about time we spent, you know, trying</p> <p>13 to make sure that RLI program participants knew</p> <p>14 what was happening; that they were able to, you</p> <p>15 know, bring a case, if necessary. Several RLI</p> <p>16 Libre program participants, in fact, did file a</p> <p>17 motion to intervene, as you may remember.</p> <p>18 So, you know, I mean, those</p> <p>19 communications were ongoing. That's how those</p> <p>20 people found out that they had an opportunity to</p> <p>21 intervene, right? We were communicating with</p> <p>22 them.</p>	<p>407</p> <p>1 program participant information?</p> <p>2 A Mr. Sussman sent us three letters</p> <p>3 within ten days with an ever-increasing level of</p> <p>4 threat. We needed to ensure that RLI program</p> <p>5 participants were safe. We needed to negotiate a</p> <p>6 confidentiality provision to ensure that they be</p> <p>7 safe.</p> <p>8 Q I'm talking about just the ten million</p> <p>9 collateral demand, the financial demand?</p> <p>10 A Right. I would need to look at the —</p> <p>11 I mean, I have an idea. I need to look at the</p> <p>12 total number of hours that were spent in response</p> <p>13 to that. And I can apportion — I can give you a</p> <p>14 dollar amount, but I'll have to do it —</p> <p>15 Q In response to the \$10 million demand?</p> <p>16 A Yes.</p> <p>17 Q Okay. And --</p> <p>18 A And I'll provide that to you at the end</p> <p>19 of the deposition.</p> <p>20 Q And do you have a written agreement</p> <p>21 that entitles Nexus to attorneys' fees?</p> <p>22 A No. Not that I'm aware of.</p>
<p>406</p> <p>1 Q Right. But as a result of just the</p> <p>2 collateral demand, do you have any financial</p> <p>3 damage amount that you've incurred as a result of</p> <p>4 RLI's demand in March of 2017 that Nexus post</p> <p>5 10 million in collateral?</p> <p>6 A Yeah. I'll get that dollar amount for</p> <p>7 you at the end. I just need to add it up.</p> <p>8 Q So you're saying you incurred a</p> <p>9 pecuniary loss as a result of the \$10 million</p> <p>10 collateral demand?</p> <p>11 A I'm saying that we, in response to that</p> <p>12 letter, and those series of demands, we had to</p> <p>13 apportion resources to communicating with RLI</p> <p>14 program participants, to making sure that those</p> <p>15 participants' information was protected to the</p> <p>16 extent that I would have to put together what</p> <p>17 that — what that —</p> <p>18 Q I'm talking about the 10 million</p> <p>19 collateral demand, the financial demand.</p> <p>20 A No, I understand what you're talking</p> <p>21 about.</p> <p>22 Q So what does that have to do with</p>	<p>408</p> <p>1 Q And do you have -- do you know under</p> <p>2 what authority Nexus is contending that it's</p> <p>3 entitled to attorneys' fees?</p> <p>4 A I'm not a lawyer, Ms. Katsantonis.</p> <p>5 Q So you don't have -- you don't know,</p> <p>6 sitting here today, the basis to which Nexus would</p> <p>7 be entitled to attorneys' fees, right?</p> <p>8 A I'm not a lawyer, Ms. Katsantonis.</p> <p>9 Q So the answer's no, right?</p> <p>10 A I'm not a lawyer. There are certain</p> <p>11 questions that, you know --</p> <p>12 Q I'm just asking you do you know.</p> <p>13 MR. SHOREMAN: Objection. Asked and</p> <p>14 answered. You're asking for a legal conclusion.</p> <p>15 He doesn't understand that.</p> <p>16 MS. KATSANTONIS: He hasn't answered.</p> <p>17 A I'm not a lawyer.</p> <p>18 Q So the answer's no?</p> <p>19 A I can't give you the legal conclusion</p> <p>20 you're looking for because I'm not a lawyer.</p> <p>21 MR. SHOREMAN: He doesn't have -- he</p> <p>22 doesn't have the --</p>

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<p>409</p> <p>1 Q So you don't know the bases by which</p> <p>2 Nexus would be claiming attorneys' fees?</p> <p>3 A I can't provide the legal conclusion</p> <p>4 you're asking for because I'm not a lawyer.</p> <p>5 Q Okay.</p> <p>6 A Didn't finish law school yet. Maybe</p> <p>7 one day. Oh, but maybe not. I'm not sure I could</p> <p>8 do this every day. You tether yourself to a table</p> <p>9 for seven hours.</p> <p>10 MS. KATSANTONIS: Can we go off the</p> <p>11 record for a minute, please.</p> <p>12 THE VIDEOGRAPHER: We are going off the</p> <p>13 record at 20:52.</p> <p>14 (Recess taken.)</p> <p>15 THE VIDEOGRAPHER: We are back on the</p> <p>16 record at 21:07.</p> <p>17 BY MS. KATSANTONIS:</p> <p>18 Q Okay. So, Mr. Donovan, we were talking</p> <p>19 earlier about RLI's request for documents and</p> <p>20 access to Nexus' books and records in March of</p> <p>21 2017.</p> <p>22 And do you recall that after that</p>	<p>411</p> <p>1 Ms. Katsantonis, because you were involved in many</p> <p>2 of those conversations.</p> <p>3 So we were very --</p> <p>4 Q Prior to May.</p> <p>5 A -- very consistent in our request for a</p> <p>6 confidentiality agreement when it became obvious</p> <p>7 to us that RLI intended to gather significant</p> <p>8 information about our program participants at a</p> <p>9 time when it no longer was writing business.</p> <p>10 Q Let me ask you something.</p> <p>11 A It raised concerns that we needed to</p> <p>12 have our clients protected, and we simply asked</p> <p>13 that you sign a confidentiality agreement, which</p> <p>14 you wouldn't do.</p> <p>15 Q Prior to May 2017, do you have any</p> <p>16 document in which Nexus was requesting a</p> <p>17 confidentiality agreement?</p> <p>18 A No. But, I mean, you're well aware</p> <p>19 that we were requesting a confidentiality</p> <p>20 agreement. We've been consistent in that from the</p> <p>21 beginning.</p> <p>22 Q In the May meeting in 2017, Nexus did</p>
<p>410</p> <p>1 request a meeting was set up in Verona between RLI</p> <p>2 and Nexus?</p> <p>3 A What day was that?</p> <p>4 Q It was set up in May 2017.</p> <p>5 A Right. After the letters from Sussman</p> <p>6 in March?</p> <p>7 Q Correct.</p> <p>8 A Right. Yeah, I am aware of that, yes,</p> <p>9 ma'am.</p> <p>10 Q And the purpose of that meeting was so</p> <p>11 that -- RLI had requested access to Nexus' books</p> <p>12 and records, right?</p> <p>13 A That's correct. And we had insisted on</p> <p>14 establishing confidentiality provisions to protect</p> <p>15 our consumers.</p> <p>16 Q Well, you don't have any documents</p> <p>17 prior to that meeting in which Nexus requested a</p> <p>18 confidentiality agreement, right?</p> <p>19 A Since the beginning of those</p> <p>20 communications, once the -- once we received those</p> <p>21 communications from Mr. Sussman, I think we were</p> <p>22 clear. And you certainly know that,</p>	<p>412</p> <p>1 not provide any documents to RLI, correct?</p> <p>2 A That's correct. You refused to sign a</p> <p>3 confidentiality agreement.</p> <p>4 Q Well, are you saying there was a</p> <p>5 confidentiality agreement presented at the</p> <p>6 meeting?</p> <p>7 A I'm saying that you refused to engage</p> <p>8 counsel to sign one. And certainly between my</p> <p>9 competent counsel, and you being competent</p> <p>10 counsel, it could have been happened and should</p> <p>11 have been happened, and if it had happened, we</p> <p>12 would have saved millions of dollars in litigation</p> <p>13 cost.</p> <p>14 Q Isn't it true prior to the meeting no</p> <p>15 confidentiality agreement was provided by Nexus,</p> <p>16 prior to the May 2017 meeting?</p> <p>17 A I'm not sure if a draft was provided or</p> <p>18 not. But I don't think it really matters. I</p> <p>19 mean, we had significant conversations about the</p> <p>20 confidentiality agreement. At every turn we</p> <p>21 requested that you sign a confidentiality</p> <p>22 agreement, and every turn your client refused. I</p>

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<p>413</p> <p>1 <b>think the record is pretty clear on that.</b></p> <p>2 Q Mr. Donovan, I'm trying to be precise</p> <p>3 in timing. So prior to May 2017, you're not aware</p> <p>4 of any confidentiality agreement being provided to</p> <p>5 RLI, correct?</p> <p>6 A <b>Right. Prior to the demand for onerous</b></p> <p>7 <b>access to books and records that would expose</b></p> <p>8 <b>confidential information from a vulnerable class</b></p> <p>9 <b>of people, no.</b></p> <p>10 <b>We did not feel --</b></p> <p>11 Q Prior to the May meeting?</p> <p>12 A <b>Right. Prior to the May meeting. When</b></p> <p>13 <b>the May meeting it became clear that RLI intended</b></p> <p>14 <b>to raid data that was specific confidential data</b></p> <p>15 <b>that was potentially damaging to our program</b></p> <p>16 <b>participants, it is that point at which we said we</b></p> <p>17 <b>need a confidentiality agreement.</b></p> <p>18 <b>Ms. Katsantonis, I thank you for</b></p> <p>19 <b>pointing that out, because it does belie the fact</b></p> <p>20 <b>that a hundred percent of the time our focus has</b></p> <p>21 <b>been on our clients.</b></p> <p>22 Q Great.</p>	<p>415</p> <p>1 counsel.</p> <p>2 Do you -- and you're copied on it,</p> <p>3 correct.</p> <p>4 A <b>I'm cc'd at the end. Let me read this</b></p> <p>5 <b>real quick.</b></p> <p>6 <b>Yep, I've read it.</b></p> <p>7 Q Okay. So as of June 1st, 2017, RLI was</p> <p>8 still requesting information from Nexus Services,</p> <p>9 Inc., right?</p> <p>10 A <b>Yes.</b></p> <p>11 Q And Nexus Services still had not</p> <p>12 provided any books and records to RLI as of</p> <p>13 June 2017, correct?</p> <p>14 A <b>Nexus Services had the position that we</b></p> <p>15 <b>needed a confidentiality agreement to protect our</b></p> <p>16 <b>client-sensitive information.</b></p> <p>17 Q What sensitive information is being</p> <p>18 asked for in this letter --</p> <p>19 A <b>Well --</b></p> <p>20 Q -- that you needed a confidentiality</p> <p>21 agreement to protect?</p> <p>22 A <b>I340 notices include confidential</b></p>
<p>414</p> <p>1 A <b>It hasn't been --</b></p> <p>2 Q Thank you. I don't --</p> <p>3 A <b>It's -- and as you well know, when RLI</b></p> <p>4 <b>initially talked to us about signing a</b></p> <p>5 <b>confidentiality agreement, they agreed --</b></p> <p>6 Q Mr. Donovan --</p> <p>7 A <b>-- to sign a confidentiality that</b></p> <p>8 <b>would --</b></p> <p>9 Q -- this is not --</p> <p>10 A <b>-- protect our trade secret</b></p> <p>11 <b>information.</b></p> <p>12 Q Mr. Donovan --</p> <p>13 A <b>I said to RLI what I cared about was</b></p> <p>14 <b>client confidentiality.</b></p> <p>15 Q Okay, Mr. Donovan, thank you.</p> <p>16 A <b>Thank you.</b></p> <p>17 (Donovan Exhibit 23 marked for</p> <p>18 identification and attached to the transcript.)</p> <p>19 Q Forwarding you correspondence dated</p> <p>20 June 1st, 2017 --</p> <p>21 A <b>Thank you.</b></p> <p>22 Q -- from RLI's counsel to Nexus'</p>	<p>416</p> <p>1 <b>information related to program participants.</b></p> <p>2 <b>I797(c) notices can.</b></p> <p>3 Q Are those --</p> <p>4 A <b>I210 notices certainly do. And I391</b></p> <p>5 <b>notices do as well.</b></p> <p>6 <b>Other court notices would as well.</b></p> <p>7 <b>We're talking about addresses. We're talking</b></p> <p>8 <b>about individual names.</b></p> <p>9 <b>Ms. Katsantonis --</b></p> <p>10 Q Aren't those --</p> <p>11 A <b>-- this is the very information that we</b></p> <p>12 <b>need to protect.</b></p> <p>13 Q Okay. So aren't those notices, notices</p> <p>14 that RLI would get through the course of the bond</p> <p>15 program anyway?</p> <p>16 A <b>The I340s, yes. The I797(c)s, no. The</b></p> <p>17 <b>I210s, no.</b></p> <p>18 Q The I391s?</p> <p>19 A <b>Sure.</b></p> <p>20 Q Okay.</p> <p>21 A <b>But the I210, which are notices of --</b></p> <p>22 Q So RLI would already have --</p>

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<p>417</p> <p>1     <b>A</b> -- contain significant additional</p> <p>2     <b>amounts of information RLI wouldn't have.</b></p> <p>3     <b>Q</b> So RLI would already have the names and</p> <p>4     <b>personal information --</b></p> <p>5     <b>A</b> <b>You'd have the names.</b></p> <p>6     <b>Q</b> -- and personal information of the</p> <p>7     <b>bond --</b></p> <p>8     <b>A</b> <b>You'd have the A numbers, yeah.</b></p> <p>9     <b>Q</b> Okay. And there's no mention in this</p> <p>10    <b>letter of a confidentiality agreement, right? It</b></p> <p>11    <b>just -- the only mention of confidentiality is to</b></p> <p>12    <b>keep the financial information confidential,</b></p> <p>13    <b>right?</b></p> <p>14    <b>A</b> <b>Exactly. RLI seemed willing to keep</b></p> <p>15    <b>our financial information confidential, but was</b></p> <p>16    <b>resistant to signing a confidentiality agreement</b></p> <p>17    <b>to protecting consumer information, which is --</b></p> <p>18    <b>Q</b> You had not --</p> <p>19    <b>A</b> <b>Please. I want you to understand that</b></p> <p>20    <b>that was a huge driving point for me to be very</b></p> <p>21    <b>suspicious --</b></p> <p>22    <b>Q</b> Okay.</p>	<p>419</p> <p>1     <b>communication with not just a former employee,</b></p> <p>2     <b>but, you know, the former head of a terrorist</b></p> <p>3     <b>organization in Virginia, and you're doing it and</b></p> <p>4     <b>you're accepting stolen records from him.</b></p> <p>5     <b>Q</b> Mr. Donovan --</p> <p>6     <b>A</b> <b>Did you --</b></p> <p>7     <b>Q</b> -- as of this?</p> <p>8     <b>A</b> -- receive stolen records from</p> <p>9     <b>Mr. Brigman. Did you or not?</b></p> <p>10    <b>Q</b> Mr. Donovan, I'm here for your</p> <p>11    <b>deposition. It would be appropriate if you allow</b></p> <p>12    <b>me to conduct your deposition, okay?</b></p> <p>13    <b>A</b> <b>If you had not, you would say so,</b></p> <p>14    <b>Ms. Katsantonis. So we all know what that means.</b></p> <p>15    <b>Continue, please.</b></p> <p>16    <b>Q</b> Mr. Donovan, in the June 1st -- as of</p> <p>17    <b>June 1st, 2017, Nexus had not provided any</b></p> <p>18    <b>confidentiality agreements that it proposed to</b></p> <p>19    <b>RLI, correct?</b></p> <p>20    <b>A</b> <b>We asked RLI --</b></p> <p>21       <b>MR. SHOREMAN: Let me object. Let me</b></p> <p>22       <b>note this June 1st, 2017, Exhibit 23, I believe,</b></p>
<p>418</p> <p>1     <b>A</b> -- because RLI wanted -- why was RLI</p> <p>2     <b>willing to agree to confidentiality related to</b></p> <p>3     <b>business information --</b></p> <p>4     <b>Q</b> I --</p> <p>5     <b>A</b> -- but not related to clients?</p> <p>6       <b>And, Ms. Katsantonis, you signed this</b></p> <p>7     <b>letter. You stated in this letter that you</b></p> <p>8     <b>understand the requested financial information is</b></p> <p>9     <b>sensitive and confidential and you'll maintain the</b></p> <p>10    <b>confidential nature of all information provided --</b></p> <p>11    <b>Q</b> Right.</p> <p>12    <b>A</b> <b>I have reviewed --</b></p> <p>13    <b>Q</b> Didn't agree to sign a --</p> <p>14    <b>A</b> -- I've reviewed an email between David</p> <p>15    <b>Brigman and you, where he provided you, or he</b></p> <p>16    <b>states that he provided you with stolen corporate</b></p> <p>17    <b>records. I have not seen you produce that.</b></p> <p>18       <b>I'm going to send, via counsel, the</b></p> <p>19    <b>email that I've reviewed today. And this is,</b></p> <p>20    <b>again -- I don't understand why you're offering to</b></p> <p>21    <b>keep things confidential in this letter, and then</b></p> <p>22    <b>you're engaging in absolutely inappropriate</b></p>	<p>420</p> <p>1     <b>is addressed to Mary Donne Peters.</b></p> <p>2       <b>MS. KATSANTONIS: We've already had</b></p> <p>3     <b>testimony on this, Mr. Shoreman. He's copied on</b></p> <p>4     <b>it.</b></p> <p>5       <b>MR. SHOREMAN: Well, I don't want him</b></p> <p>6     <b>disclosing any communication he had about this</b></p> <p>7     <b>exhibit with his counsel because it would waive</b></p> <p>8     <b>his privilege.</b></p> <p>9       <b>MS. KATSANTONIS: That's great. And</b></p> <p>10    <b>I'm only asking him --</b></p> <p>11    <b>MR. SHOREMAN: Or any information he</b></p> <p>12    <b>received from his counsel.</b></p> <p>13    <b>MS. KATSANTONIS: -- as a matter of</b></p> <p>14    <b>fact.</b></p> <p>15    <b>Q</b> Nexus had not provided, and you don't</p> <p>16    <b>have any correspondence prior to June 1st, 2017,</b></p> <p>17    <b>where Nexus advised RLI a confidentiality</b></p> <p>18    <b>agreement had to be executed, correct?</b></p> <p>19    <b>A</b> <b>We were consistent in telling RLI that</b></p> <p>20    <b>we needed a confidential agreement. The letter</b></p> <p>21    <b>that you've put in front of me is dated June 1st.</b></p> <p>22    <b>Q</b> Right.</p>

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<p>421</p> <p>1     <b>A</b>   The letter you have put in front of me,  2   <b>which is a letter from you to Mary Donne, doesn't</b>  3   <b>mention a confidentiality agreement.</b>  4         <b>Those things I can testify to because</b>  5   <b>this document's sitting in front of me.</b>  6     <b>Q</b>   And you're not aware of any  7   confidentiality agreement that was provided to RLI  8   prior to June 1st, 2017, correct?  9     <b>A</b>   <b>I wouldn't know. I know we had</b>  10  <b>conversations about it.</b>  11    <b>Q</b>   Okay. And isn't it true that RLI did  12  provide a confidentiality agreement sometime later  13  for Nexus to review and consider?  14    <b>A</b>   <b>That's correct.</b>  15    <b>Q</b>   Okay. And --  16    <b>A</b>   <b>And it was wholly insufficient because</b>  17  <b>it didn't protect the client-confidential</b>  18  <b>information.</b>  19    <b>Q</b>   Mr. Donovan --  20    <b>A</b>   <b>Because your client plans to use that</b>  21  <b>to lock clients up. We all know that. That's why</b>  22  <b>your client is unwilling to agree to the</b></p>	<p>423</p> <p>1   <b>the facts.</b>  2     <b>Q</b>   There are no facts to support your  3   statement.  4     <b>A</b>   <b>Did you say that you have a duty to</b>  5   <b>deliver people? I mean, you said it here.</b>  6     <b>Q</b>   Mr. Donovan, I don't know why you're  7   trying to attack me in the end of this deposition.  8   But right now we're here for your deposition --  9     <b>A</b>   <b>Ms. Katsantonis --</b>  10    <b>Q</b>   -- and I'm only trying to get the  11  facts --  12    <b>A</b>   <b>-- if you'll answer my --</b>  13    <b>Q</b>   -- to your understanding, Mr. Donovan.  14  It is your deposition.  15    <b>A</b>   <b>So did you accept stolen corporate</b>  16  <b>documents from Mr. Brigman, Ms. Katsantonis? Did</b>  17  <b>you or not?</b>  18    <b>Q</b>   Mr. Donovan --  19    <b>A</b>   <b>That's a yes.</b>  20    <b>Q</b>   -- we're going to ask your counsel --  21         MS. KATSANTONIS: Counsel, Mr. Shoreman  22  and Mr. Williams, I'm going to ask you both to</p>
<p>422</p> <p>1   <b>protections, right?</b>  2     <b>Q</b>   Mr. Donovan, do you have any facts or  3   circumstances to support a contention that RLI is  4   going to lock up program participants?  5     <b>A</b>   <b>Other than your statement in a hearing</b>  6   <b>that you -- your client believes it's their duty</b>  7   <b>to deliver people.</b>  8         <b>How exactly are you going to do that?</b>  9   <b>How exactly are you going to deliver them? You're</b>  10  <b>going to arrest them, right? You're going to put</b>  11  <b>handcuffs and you're going to hire bounty hunters</b>  12  <b>and you're going to go into their houses. You're</b>  13  <b>going to, you know, abuse them in front of their</b>  14  <b>children. You're going to -- you know, you're</b>  15  <b>going to do the Trump dance, right? This is what</b>  16  <b>it is.</b>  17         <b>Your insurance company is going to go</b>  18  <b>and try to get rid of its liability by locking</b>  19  <b>these people up. It's absolutely ridiculous.</b>  20    <b>Q</b>   Can we stick to the facts? This is  21  what your deposition is about.  22    <b>A</b>   <b>That -- these are the facts. These are</b></p>	<p>424</p> <p>1   direct your client to stop asking questions of  2   counsel. It's inappropriate.  3     <b>A</b>   <b>I'd like to direct my counsel to draft</b>  4   <b>a Rule 11 letter.</b>  5         <b>I am tired of people receiving --</b>  6         MS. KATSANTONIS: Let's go off the  7   record.  8     <b>A</b>   <b>-- receiving stolen --</b>  9         MR. WILLIAMS: Let's go off the record.  10   Let's take a break. Let's take a break.  11         MS. KATSANTONIS: Let's go off the  12   record.  13         THE VIDEOGRAPHER: We are going off the  14   record at 21:19.  15         (Recess taken.)  16         THE VIDEOGRAPHER: We are back on the  17   record at 21:24.  18   BY MS. KATSANTONIS:  19    <b>Q</b>   That's the March 19th, 2018 letter.  20    <b>A</b>   <b>Yes, ma'am.</b>  21    <b>Q</b>   So I'm going to show you a document  22   dated March 19th, 2018.</p>

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<p>1 Do you recognize this document you're</p> <p>2 copied on?</p> <p>3 <b>A Let me read it real quick.</b></p> <p>4 (Donovan Exhibit 24 marked for</p> <p>5 identification and attached to the transcript.)</p> <p>6 <b>A It's a really long letter. I'm sort</b></p> <p>7 <b>of – I'm remembering it and I'm breezing through</b></p> <p>8 <b>it. But if you ask specific questions, I may need</b></p> <p>9 <b>to go back to the document.</b></p> <p>10 MR. SHOREMAN: While you're taking a</p> <p>11 look at that, let me just note this is obviously a</p> <p>12 letter from counsel to counsel. I'll caution the</p> <p>13 witness any communication he had with counsel</p> <p>14 concerning this are privileged. And if you</p> <p>15 discuss them, you will waive that privilege.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 Q In March of 2018, RLI made a further</p> <p>18 demand for access to Nexus Services' records,</p> <p>19 right.</p> <p>20 <b>A It certainly appears that way in this</b></p> <p>21 <b>document that was a demand that you made, yes.</b></p> <p>22 Q Okay. And in the first paragraph of</p>	<p>425</p> <p>1 right?</p> <p>2 <b>A That's what it says. What it doesn't</b></p> <p>3 <b>say is that the agreement wholly -- the</b></p> <p>4 <b>confidentiality agreement was wholly insufficient</b></p> <p>5 <b>because it didn't address the client-specific</b></p> <p>6 <b>issues sufficient enough.</b></p> <p>7 (Donovan Exhibit 25 marked for</p> <p>8 identification and attached to the transcript.)</p> <p>9 Q And Nexus didn't respond to that letter</p> <p>10 until March 28th, one day before RLI was to</p> <p>11 present itself at the offices of Nexus in Verona,</p> <p>12 correct?</p> <p>13 <b>A I don't think that's a correct</b></p> <p>14 <b>representation of what this says.</b></p> <p>15 Q If you look at the bottom of the email.</p> <p>16 <b>A I think you wanted to come to the</b></p> <p>17 <b>campus on March 29th, right? I don't think that</b></p> <p>18 <b>that appointment was set.</b></p> <p>19 <b>And then I think that you, in this</b></p> <p>20 <b>communication, said, "I'm coming tomorrow," right?</b></p> <p>21 Q Well, in our letter we said, "We demand</p> <p>22 that Nexus make its books, records, and accounts</p>
<p>426</p> <p>1 the letter RLI demanded that Nexus make its books,</p> <p>2 records, and accounts available for inspection by</p> <p>3 RLI at its offices in Verona -- at Nexus' office</p> <p>4 in Verona on March 29th, 2018, correct?</p> <p>5 <b>A That's what it says, yes, ma'am.</b></p> <p>6 Q Okay. And then there's the discussion</p> <p>7 about the confidentiality agreement. RLI confirms</p> <p>8 that it has provided one.</p> <p>9 And if you look on page 3 of the</p> <p>10 letter, RLI says to accommodate Nexus'</p> <p>11 confidentiality concerns, it's willing to execute</p> <p>12 the confidentiality agreement provided by RLI's</p> <p>13 counsel, even though RLI's rights under the</p> <p>14 indemnity agreement are no way conditioned upon</p> <p>15 its execution of such confidentiality agreement,</p> <p>16 correct?</p> <p>17 <b>A That is the language in the letter,</b></p> <p>18 <b>yes.</b></p> <p>19 Q Right. And RLI advised whether or not</p> <p>20 Nexus chooses to proceed under the agreement, RLI</p> <p>21 expected Nexus to cooperate in making its books</p> <p>22 and records available to it by March 29th, 2018,</p>	<p>427</p> <p>1 available on March 29th," right?</p> <p>2 <b>A That's true.</b></p> <p>3 Q Right.</p> <p>4 <b>A But we didn't -- it's not as if we had</b></p> <p>5 <b>a meeting that was canceled, right? We didn't</b></p> <p>6 <b>have a meeting on March 29th. On March 28th you</b></p> <p>7 <b>said in an email, "I'm coming tomorrow." And it</b></p> <p>8 <b>was Mary Donne's --</b></p> <p>9 Q Well, on March 19th --</p> <p>10 <b>A -- response that said, "Don't come</b></p> <p>11 <b>tomorrow because we're not going to be there,"</b></p> <p>12 <b>right?</b></p> <p>13 Q On March 19th we said -- RLI asked</p> <p>14 Nexus to make its books, records, and accounts</p> <p>15 available on March 29th, right?</p> <p>16 <b>A Yeah. But we never said you could come</b></p> <p>17 <b>to the campus. I'm just saying --</b></p> <p>18 Q Right. You never responded.</p> <p>19 <b>A -- you would have set up an</b></p> <p>20 <b>appointment.</b></p> <p>21 Q You didn't respond at all, right?</p> <p>22 <b>A You sent an email saying, "Hey, we're</b></p> <p>428</p>

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<p style="text-align: right;">429</p> <p>1 going to show up tomorrow."</p> <p>2 And we said, "No, you're not."</p> <p>3 Q We didn't send an email saying we were</p> <p>4 going to show up tomorrow. We sent a letter on</p> <p>5 March 19th saying we'll show up on March 28th,</p> <p>6 correct? I mean on March 29th.</p> <p>7 A It looks like on March 28th, 2018,</p> <p>8 10:39 a.m. Vivian Katsantonis wrote, "Mary Donne</p> <p>9 and Amy, We have not received a response to our</p> <p>10 correspondence on March 19th regarding access to</p> <p>11 and our review of Nexus Services books and</p> <p>12 records. As set forth in our correspondence, we</p> <p>13 plan to review those records tomorrow, March 29th,</p> <p>14 at Nexus's offices in Verona, Virginia."</p> <p>15 Q Right. So we had --</p> <p>16 A That was not an appointment. That was</p> <p>17 you saying, "I'm coming tomorrow." That's</p> <p>18 different.</p> <p>19 Q Well, we told you on March 19th, that</p> <p>20 RLI planned to be at your offices on March 29th,</p> <p>21 right? That's what the March 19th letter says in</p> <p>22 the first paragraph.</p>	<p style="text-align: right;">431</p> <p>1 EXAMINATION BY COUNSEL FOR THE DEFENDANTS</p> <p>2 BY MR. SHOREMAN:</p> <p>3 Q Mr. Donovan, during Ms. Katsantonis'</p> <p>4 examination you were asked about damages, bad</p> <p>5 faith, specifically damages concerning default</p> <p>6 rates.</p> <p>7 A Correct.</p> <p>8 Q Did you have an opportunity to review</p> <p>9 records to calculate those damages?</p> <p>10 A Yes.</p> <p>11 Q Please tell us what you determined.</p> <p>12 A We calculated \$2.5 million in loss</p> <p>13 related to the breach rate of RLI versus the</p> <p>14 global breach rate, which has been caused by RLI's</p> <p>15 bad faith.</p> <p>16 We calculated approximately \$2 million</p> <p>17 in attorneys' fees to fight for the</p> <p>18 confidentiality protections we ultimately received</p> <p>19 from Judge Urbanski in his order.</p> <p>20 And we've calculated about \$3 million</p> <p>21 in reputational damage.</p> <p>22 MS. KATSANTONIS: Okay. Can you -- oh,</p>
<p style="text-align: right;">430</p> <p>1 A It certainly -- in the March 19th</p> <p>2 letter it does say that it wants to come and</p> <p>3 inspect records on March 29th. That is different</p> <p>4 than having an appointment to do so. That was my</p> <p>5 point.</p> <p>6 Q And counsel for Nexus advises that RLI</p> <p>7 should not come to the offices and the documents</p> <p>8 are not available and RLI should not appear at the</p> <p>9 Nexus campus, correct?</p> <p>10 A That is what it says, yes.</p> <p>11 MS. KATSANTONIS: I have no further</p> <p>12 questions.</p> <p>13 THE WITNESS: Oh, Ms. Katsantonis, I do</p> <p>14 have the damages.</p> <p>15 MS. KATSANTONIS: I have no further</p> <p>16 questions.</p> <p>17 THE WITNESS: So you don't want to the</p> <p>18 damages? Because you asked.</p> <p>19 MS. KATSANTONIS: Your counsel can do</p> <p>20 that.</p> <p>21 MR. SHOREMAN: We'll do it quickly on</p> <p>22 redirect.</p>	<p style="text-align: right;">432</p> <p>1 sorry. I forgot.</p> <p>2 THE WITNESS: I can't be mad at you.</p> <p>3 You're just so charming, even when you're not.</p> <p>4 Q You also offered to provide</p> <p>5 Ms. Katsantonis some additional information on</p> <p>6 liquid assets? Did you have an opportunity to</p> <p>7 review that information?</p> <p>8 A I might. I had committed to providing</p> <p>9 that at the end of the deposition and I can do</p> <p>10 that before. I'll do that, you know, once we</p> <p>11 break.</p> <p>12 Q Do you want to do it now, please?</p> <p>13 A I can. I'm going to estimate our</p> <p>14 liquid capital at about \$3 million.</p> <p>15 Q Currently?</p> <p>16 A That -- yes. That includes monthly</p> <p>17 AR -- a monthly AR that is averaged upon</p> <p>18 collection.</p> <p>19 Q All right. And lastly, you offered to</p> <p>20 give Ms. Katsantonis some information on</p> <p>21 unencumbered interest in real estate assets, other</p> <p>22 than the \$3,000 in equity in the one piece of</p>

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<p>1 property.</p> <p>2 Do you have information sufficient</p> <p>3 to --</p> <p>4 <b>A We have no other properties that we own</b></p> <p>5 <b>full and -- free and clear.</b></p> <p>6 MR. SHOREMAN: I don't believe there</p> <p>7 was anything else that was outstanding.</p> <p>8 MR. WILLIAMS: Damages.</p> <p>9 MR. SHOREMAN: We did the damages.</p> <p>10 All right. Thank you very much. I</p> <p>11 have no further questions.</p> <p>12 EXAMINATION BY COUNSEL FOR THE PLAINTIFF</p> <p>13 BY MS. KATSANTONIS:</p> <p>14 Q Briefly on redirect. With regard to</p> <p>15 the 3 million in liquid assets, is that all</p> <p>16 monthly -- is that all based on program</p> <p>17 participant payments?</p> <p>18 <b>A That's correct. Cash on hand and</b></p> <p>19 <b>program participant payments.</b></p> <p>20 Q So it's based on your -- how much cash</p> <p>21 do you have on hand right now separate from the</p> <p>22 program participant revenue?</p>	<p>433</p> <p>1 in that versus -- and then looking at the legal</p> <p>2 bills.</p> <p>3 Now, I haven't gone to the legal bill</p> <p>4 detail and done it line by line, but I certainly</p> <p>5 can do that.</p> <p>6 Q So it's your testimony that you</p> <p>7 incurred 2 million in attorneys' fee to negotiate</p> <p>8 a confidentiality agreement?</p> <p>9 <b>A Well, it was difficult to negotiate</b></p> <p>10 <b>because you wouldn't agree to it. And then we</b></p> <p>11 <b>ultimately ended up having to get a protective</b></p> <p>12 <b>order issued by the court, right?</b></p> <p>13 Q And then the two and a half million</p> <p>14 you're asserting in loss from the breach rate, can</p> <p>15 you tell me how that's calculated?</p> <p>16 <b>A That's based on what RLI's breach</b></p> <p>17 <b>amount would be if RLI's breach rate was</b></p> <p>18 <b>consistent with Nexus' global breach rate.</b></p> <p>19 Q So just show me the math exactly.</p> <p>20 <b>A Of course, of course, absolutely.</b></p> <p>21 Q Show me the math.</p> <p>22 <b>A So I'm razzled with my documents.</b></p>
<p>434</p> <p>1 <b>A \$420,000 in cash.</b></p> <p>2 Q Okay. And with regard to the 2 million</p> <p>3 in attorneys' fees to fight the confidentiality</p> <p>4 agreement, how is that broken down? How did you</p> <p>5 determine the 2 million figure?</p> <p>6 MR. SHOREMAN: That wasn't raised on</p> <p>7 redirect. That's beyond the scope of my redirect.</p> <p>8 MS. KATSANTONIS: No. He said</p> <p>9 2 million in attorneys' fee for confidentiality</p> <p>10 agreement. That was his testimony.</p> <p>11 MR. SHOREMAN: I thought we were going</p> <p>12 to default.</p> <p>13 THE WITNESS: No, the 2 million for the</p> <p>14 confidentiality agreement is certainly in there.</p> <p>15 MS. KATSANTONIS: He added that.</p> <p>16 <b>A And that is the estimate of the legal</b></p> <p>17 <b>fees that were spent specifically on the</b></p> <p>18 <b>confidentiality agreement.</b></p> <p>19 Q How would you derive that figure?</p> <p>20 Based on what?</p> <p>21 <b>A I derived it based on a rough</b></p> <p>22 <b>calculation of the total hours that were involved</b></p>	<p>435</p> <p>1 Everything was together and now everything is not</p> <p>2 together.</p> <p>3 Yeah, so in calculating RLI's breach</p> <p>4 rate as consistent with our global breach rate,</p> <p>5 instead of \$3,212,883.67 in breaches, we would</p> <p>6 have had an estimated 737,800 in breaches.</p> <p>7 Q Slow down. Slow down. I just want to</p> <p>8 understand that.</p> <p>9 <b>A Uh-huh.</b></p> <p>10 Q 3 million -- you said 3 million 200 --</p> <p>11 <b>A And 12 thousand 883 dollars and 67</b></p> <p>12 <b>cents.</b></p> <p>13 Q That's for all breaches program wide?</p> <p>14 <b>A No. That's RLI breaches. Those are</b></p> <p>15 <b>all RLI's invoices paid?</b></p> <p>16 Q 3,212,000?</p> <p>17 <b>A Correct.</b></p> <p>18 Q Okay. So continue with how you</p> <p>19 calculated it.</p> <p>20 <b>A And it should have been 737,800 if the</b></p> <p>21 <b>breach rate were consistent.</b></p> <p>22 Q So you're just saying that your breach</p>

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<p>437</p> <p>1 rate is 2-plus percent, and that the RLI bond 2 breach rate is more than 10 percent. So you're 3 just coming up with the difference; is that right? 4 <b>A Well, not quite just like that. We're</b> 5 <b>applying an understanding that we don't have the</b> 6 <b>ability to dispute the way we do with other</b> 7 <b>sureties. We had to communicate disclosures to</b> 8 <b>RLI clients related to disclosures of their data</b> 9 <b>without confidentiality provisions. And all of</b> 10 <b>those things, of course, affect bond performance.</b> 11 <b>So we do have a much higher breach rate</b> 12 <b>with RLI, and there's a reason for that.</b> 13 Q Well, in quantifying it, you're doing 14 it based upon the difference between the -- your 15 contention of the program-wide breach rate and 16 RLI's breach rate? 17 <b>A That is correct.</b> 18 Q And then you're just taking the 19 variance, correct? 20 <b>A That's correct.</b> 21 Q All right. And then how was the 22 3 million in reputational damages calculated?</p>	<p>439</p> <p>1 determine a damage incurred as a result of 2 reputational loss? 3 <b>A I have had communications with counsel</b> 4 <b>that I'm not going to testify to specifically.</b> 5 Q All right. Do you, Nexus, have any 6 actual financial calculation to support a request 7 for 3 million in reputational damages? 8 <b>A And as I said, I think that</b> 9 <b>substantiated amount would be much, much, more.</b> 10 Q But you have no documents to present to 11 RLI to substantia a 3 million calculation, 12 correct? 13 <b>A Reputational damage is difficult to</b> 14 <b>assert in documents anyway. But, no, I do not</b> 15 <b>have that document in front of me.</b> 16 <b>I think I could confidently prove much</b> 17 <b>more than that.</b> 18 Q And what elements form the bases of the 19 reputational damage? 20 <b>A What do you mean?</b> 21 Q How -- yeah, what would you use to 22 substantiate --</p>
<p>438</p> <p>1 <b>A I think it's much, much worse than</b> 2 <b>that, to be honest. The attacks that we've</b> 3 <b>experienced in this litigation as a company that</b> 4 <b>has never failed to indemnify or exonerate your</b> 5 <b>client.</b> 6 <b>I mean, you'd think based on the flavor</b> 7 <b>of this litigation that you would be out millions</b> 8 <b>and millions of dollars. That's not true. And</b> 9 <b>the reputational damages that Nexus has suffered</b> 10 <b>has been extensive as a result of that. Not the</b> 11 <b>least of which includes damages, you know, from</b> 12 <b>our reputation, vis-à-vis the government, other</b> 13 <b>sureties, the community at large.</b> 14 Q Can you tell me exactly how you 15 quantify 3 million in reputational damage? 16 <b>A It's an estimate.</b> 17 Q So there's no document or calculation 18 it's based upon. 19 <b>A No. The calculation would be scores</b> 20 <b>more. I was trying to pick a conservative, make a</b> 21 <b>conservative estimate valuation.</b> 22 Q Have you undertaken any analysis to</p>	<p>440</p> <p>1 MR. SHOREMAN: I think that a legal -- 2 I think you're seeking a legal conclusion. 3 <b>A It sounds like a legal conclusion.</b> 4 <b>That's why I'm asking.</b> 5 MR. WILLIAMS: Are you talking about, 6 like, bank closing or what are you talking about? 7 BY MS. KATSANTONIS: 8 Q Any document you have, whatsoever, to 9 substantiate the 3 million in reputational loss. 10 MR. SHOREMAN: You're asking for a 11 legal conclusion because this could be -- like he 12 was saying, you know, there's no -- 13 MR. HARRIS: He just said he could 14 prove it. We're just wondering what he -- 15 MS. KATSANTONIS: He just said he could 16 prove it. I'm trying to understand what's -- 17 <b>A I said I think if we pulled it</b> 18 <b>together, it would be a lot more than that. So I</b> 19 <b>made a conservative estimated valuation of</b> 20 <b>3 million.</b> 21 Q I'm trying to understand what 22 documents? What would you look at? What are you</p>

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<p>441</p> <p>1 going to look at to prove that you have</p> <p>2 reputational damage?</p> <p>3 <b>A Well, think about it. Based alone on</b></p> <p>4 <b>the fact that our breach rate is so much higher</b></p> <p>5 <b>with RLI-bonded principals, the damage done to our</b></p> <p>6 <b>clients -- with our client alone in understanding</b></p> <p>7 <b>that we are having a difficult time protecting</b></p> <p>8 <b>their confidential information, that a surety</b></p> <p>9 <b>wants access to their confidential information and</b></p> <p>10 <b>isn't willing to sign a confidentiality agreement.</b></p> <p>11 <b>Q Aren't those damages collected in your</b></p> <p>12 <b>2.5 breach rate and your 2 million confidentiality</b></p> <p>13 <b>agreement numbers?</b></p> <p>14 <b>A In a sense. But they're separate</b></p> <p>15 <b>numbers altogether than the reputational damage.</b></p> <p>16 <b>Unfortunately, when a company like RLI engages in</b></p> <p>17 <b>this type of behavior, the damages are extensive.</b></p> <p>18 <b>Q Can you tell me how specifically your</b></p> <p>19 <b>reputation was damaged?</b></p> <p>20 <b>MR. SHOREMAN: Asked and answered.</b></p> <p>21 <b>A Have you read your pleadings?</b></p> <p>22 <b>Q Can you tell me specifically how your</b></p>	<p>443</p> <p>1 <b>average breach rate and understanding that if we</b></p> <p>2 <b>didn't have the issues with RLI, we could expect a</b></p> <p>3 <b>consistent breach rate.</b></p> <p>4 <b>I also wanted to point out,</b></p> <p>5 <b>Ms. Katsantonis, that in addition to the damages</b></p> <p>6 <b>is the amount of money that was taken for canceled</b></p> <p>7 <b>bonds that was ultimately paid by Nexus pursuant</b></p> <p>8 <b>to a demand from RLI. Until you provide the</b></p> <p>9 <b>cancellations, I don't know how much that is. And</b></p> <p>10 <b>then whatever the value of those corporate</b></p> <p>11 <b>documents that was given to you by Mr. Brigman.</b></p> <p>12 <b>So those are also damages, I would say.</b></p> <p>13 <b>MR. WILLIAMS: Oh, Brigman. He's</b></p> <p>14 <b>touted your support.</b></p> <p>15 <b>Q All right. Any other damages?</b></p> <p>16 <b>A No.</b></p> <p>17 <b>Q No other damages you're seeking in this</b></p> <p>18 <b>litigation?</b></p> <p>19 <b>A Not that I'm -- not that I have any</b></p> <p>20 <b>information to go into at this point.</b></p> <p>21 <b>MS. KATSANTONIS: Okay. I have nothing</b></p> <p>22 <b>further.</b></p>
<p>442</p> <p>1 reputation was damaged? What was the damage?</p> <p>2 <b>A In this litigation representations have</b></p> <p>3 <b>been made in pleadings and in hearings that paint</b></p> <p>4 <b>Nexus as an obstructionist, when Nexus has, at any</b></p> <p>5 <b>turn, attempted to work with RLI.</b></p> <p>6 <b>And I have demonstrated that in the</b></p> <p>7 <b>multiple depositions that you've taken of me,</b></p> <p>8 <b>where I point out over and over again the points</b></p> <p>9 <b>and time of which RLI has done exactly what -- I'm</b></p> <p>10 <b>sorry -- Nexus done exactly what RLI asked Nexus</b></p> <p>11 <b>to do.</b></p> <p>12 <b>Q Okay.</b></p> <p>13 <b>A So it's clear.</b></p> <p>14 <b>Q All right. And so -- but sitting here</b></p> <p>15 <b>today, you have no documents to quantify that</b></p> <p>16 <b>reputational loss, correct?</b></p> <p>17 <b>A I answered that already. I do not have</b></p> <p>18 <b>a document, as I said before.</b></p> <p>19 <b>Q Has Nexus taken an analysis to</b></p> <p>20 <b>determine the direct impact of RLI's conduct on</b></p> <p>21 <b>the breach rate?</b></p> <p>22 <b>A Only insofar as comparing it to our</b></p>	<p>444</p> <p>1 <b>MR. SHOREMAN: Thank you. Thank you</b></p> <p>2 <b>very much.</b></p> <p>3 <b>THE VIDEOGRAPHER: If there are no</b></p> <p>4 <b>further questions, this ends the deposition. We</b></p> <p>5 <b>are going off the record at 21:44.</b></p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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Transcript of Micheal Paul Donovan, Corporate Designee

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## 1 ACKNOWLEDGMENT OF DEPONENT

2 I, MICHEAL PAUL DONOVAN, do hereby  
 3 acknowledge that I have read and examined the  
 4 foregoing testimony, and the same is a true,  
 5 correct and complete transcription of the  
 6 testimony given by me and any corrections appear  
 7 on the attached Errata sheet signed by me.

8  
 9 \_\_\_\_\_  
 10 (DATE) (SIGNATURE)

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## 1 CERTIFICATE OF REPORTER - NOTARY PUBLIC

2 I, JUDITH E. BELLINGER, RPR, CRR, the  
 3 officer before whom the foregoing deposition was  
 4 taken, do hereby certify that the foregoing  
 5 transcript is a true and correct record of the  
 6 testimony given; that said testimony was taken by  
 7 me and thereafter reduced to typewriting under my  
 8 direction; that reading and signing was requested;  
 9 and that I am neither counsel for, related to, nor  
 10 employed by any of the parties to this case and  
 11 have no interest, financial or otherwise, in its  
 12 outcome.

13 IN WITNESS WHEREOF, I have hereunto set  
 14 my hand and affixed my notarial seal this 4th day  
 15 of March, 2020.

16 My Commission Expires: September 30, 2020

17  
 18  
 19 *Judith E. Bellinger*  
 20 \_\_\_\_\_

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 22 THE COMMONWEALTH OF VIRGINIA

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## CONTAINS CONFIDENTIAL PORTIONS

Transcript of Micheal Paul Donovan, Corporate Designee

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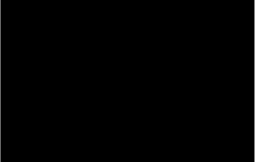
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